

1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF C O O K)

US EPA RECORDS CENTER REGION 5



482942

4 IN THE CIRCUIT COURT OF COOK COUNTY
 5 COUNTY DEPARTMENT - CHANCERY DIVISION

6 CITY OF CHICAGO,)
 7)
 8 Plaintiff,)

9 vs.)

10 NL INDUSTRIES, INC., and)
 11 ARTRA GROUP, INC.,)

12 Defendants.)

13 -----)
 14 NL INDUSTRIES, INC,)
 15)
 16 Counterclaim Plaintiff/)
 17 Counterclaim Defendant,)

18 vs.)

19 ARTRA GROUP, INC.,)

20 Counterclaim Defendant/)
 21 Counterclaim Plaintiff,)

22 -----)
 23 NL INDUSTRIES, INC., and)
 24 ARTRA GROUP, INC.,)

25 Third-Party Plaintiffs,)

26 vs.)

27 GOODWILL INDUSTRIES OF CHICAGO)
 28 AND COOK COUNTY, ILLINOIS, INC,)
 29 JOHN HECKENS; M&T ENTERPRISES,)
 30 INC.; LAVON TARR; MARTIN S.)
 31 BIEBER; RANDALL POLK, individu-)
 32 ally and d/b/a WRIP WRECKING)
 33 CO.; and COLE-TAYLOR BANK, as)
 34 Trustee Under Trust No. 84141,)

35 Third-Party Defendants.)

No. 91 CH 04534
 Judge A. Green

002473

COPY

VICTORIA COURT REPORTING SERVICES, INC.

0000197

1 The discovery deposition of ROGER N.
2 CIESLIK, called for examination pursuant to notice
3 and the Rules of the Supreme Court of Illinois and
4 the Illinois Code of Civil Procedure, taken in the
5 above-entitled cause before Sandra A. Kaspar, a
6 notary public in and for the County of Du Page and
7 State of Illinois, at 200 East Randolph Drive,
8 61st Floor, Chicago, Illinois, on the 30th day of
9 April 1992 commencing at 9:00 o'clock a.m.

10

11 PRESENT:

12 HON. KELLY R. WELSH, Corporation Counsel,
13 BY: MS. ARLENE E. MARTIN,
14 Assistant Corporation Counsel,
15 180 North La Salle Street
16 Suite 704
17 Chicago, Illinois 60601

18 On behalf of plaintiff City of
19 Chicago;

20 KIRKLAND & ELLIS
21 BY: MR. REED S. OSLAN and
22 MR. KEVIN H. RHODES
23 200 East Randolph Drive
24 Suite 6100
 Chicago, Illinois 60601

 On behalf of defendant, counter-
 claim plaintiff/counterclaim
 defendant, and third-party
 plaintiff NL Industries, Inc.;

23

24

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1 PRESENT: (Continued)

2 KWIATT and SILVERMAN, LTD.
3 BY: MR. SCOTT E. TUCKMAN
4 537 North Wells Street
5 Chicago, Illinois 60610

6 On behalf of defendant, counter-
7 claim defendant/counterclaim
8 plaintiff, and third-party
9 plaintiff ARTRA Group, Inc.;

10 LARY G. STONE & ASSOCIATES
11 BY: MR. LARY G. STONE
12 120 West Madison Street
13 Suite 1104
14 Chicago, Illinois 60602

15 On behalf of third-party
16 defendant Lavon Tarr.

17 * * * * *

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19
20
21
22
23
24 COR475

I N D E XWITNESS:Page

ROGER N. CIESLIK

Examination by:

Mr. Oslan

5

Mr. Tuckman

104

Mr. Stone

115

Ms. Martin

129

Further Examination by:

Mr. Oslan

125

Mr. Stone

139

EXHIBITSNumberMarked

1

44

2

63

3

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4

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1 (Witness sworn.)

2 MR. OSLAN: Mr. Cieslik, my name is Reed
3 Oslan. I represent NL Industries in a lawsuit
4 filed by the City of Chicago against NL Industries
5 and ARTRA.

6 ROGER N. CIESLIK,
7 called as a witness herein, having been first duly
8 sworn, was examined and testified as follows:

9 EXAMINATION

10 BY MR. OSLAN:

11 Q. Would you state your full name for the
12 record, please.

13 A. Roger N. Cieslik.

14 Q. Are you employed by the City of Chicago?

15 A. With the Chicago Department of Health.

16 Q. And that is a division of the city; is
17 that correct?

18 A. Yes.

19 Q. Are you represented by counsel here
20 today?

21 A. Yes.

22 Q. That's Ms. Martin?

23 A. Ms. Martin.

24 Q. Have you had your deposition taken

G02477

1 before?

2 A. I think so but I'm not positive.

3 MR. OSLAN: Let me describe for you what will
4 occur today.

5 I'll be asking you a series of
6 questions. If at any time you don't understand a
7 question I ask you, I will ask that you please
8 stop me and say, "Reed, I don't understand the
9 question. Please rephrase it." If you don't stop
10 me but answer the question, for purposes of this
11 litigation we will all assume you understood the
12 question. Is that fair enough?

13 THE WITNESS: Right.

14 BY MR. OSLAN:

15 Q. You said you weren't sure if you were
16 deposed before or not?

17 A. I'm pretty sure I have been but some of
18 the meetings get awful vague. I don't remember if
19 they were meetings or depositions.

20 Q. You don't recall anything specific about
21 giving sworn testimony; is that correct --

22 A. No.

23 Q. You said that you're employed by the
24 Department of Health; is that correct?

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VICTORIA COURT REPORTING SERVICES, INC.

1 A. Yes.

2 Q. What is your position?

3 A. I'm supervising health code enforcement
4 inspection analyst.

5 Q. How long have you held that role?

6 A. Probably ten to twelve years.

7 Q. To whom do you report at the Department
8 of Health?

9 A. Currently to Frances Ginther,
10 G-i-n-t-h-e-r.

11 Q. Is that Mr. or Mrs. Ginther?

12 A. Miss.

13 Q. What is her role at the Department of
14 Health?

15 A. She's director of health regulations.

16 Q. What are your responsibilities as
17 supervising health code enforcement analyst for
18 the Department of Health?

19 A. I supervise health code enforcement
20 officers, a complaint intake system, and some
21 information-dispensing people. Routine duties
22 would be the licensing and inspection of hotel/
23 motels, licensing and inspection of beauty and
24 barbershops, and regulation and licensure of the

002179

1 funeral industry.

2 Q. Are there any other major
3 responsibilities you have not mentioned?

4 A. Those are the routine items. Then all
5 nonroutine items that the department would be
6 involved in in a regulatory aspect, i.e., not
7 restaurants or food stores or hospitals or nursing
8 homes, because they're licensed by other
9 sections.

10 But things not licensed: a doctor's
11 office, a dentist's office, a pharmacy, horrendous
12 private home conditions that somebody didn't --
13 that they can't get access.

14 Q. Let's step back then for a minute and
15 discuss each one of these more specifically.

16 Part of your function as supervising
17 health code enforcement analyst is to supervise
18 certain health code enforcement officers?

19 A. Right.

20 Q. In that role what do you specifically do?

21 A. An establishment wishing to be licensed
22 with the city would make an application with the
23 Department of Revenue, and in the instance of a
24 hotel/motel would dispatch a copy of that

002089

1 application to me and to other city agencies. I
2 would then assign it to one of the inspectors to
3 go out and inspect that place and make a
4 recommendation for approval or disapproval of the
5 license.

6 Q. Is approval or disapproval related to
7 health issues?

8 A. Sanitary conditions.

9 Q. Are there any other functions you have in
10 relation to supervising health code enforcement
11 officers?

12 A. All the guidance. Do all the steps of
13 any inspection they make. That may be a simpler
14 way of saying it.

15 Q. So you supervise their inspections in
16 effect?

17 A. Right.

18 Q. Do your inspectors get involved in
19 environmental issues?

20 A. Upon rare occasion.

21 Q. Are your inspectors specialists in
22 environmental issues?

23 A. No, and I...

24 Q. So the inspectors that work for you are

002481

1 not environmental specialists; is that correct?

2 A. No.

3 Q. I was correct?

4 A. Yes.

5 Q. You also mention that you supervise a
6 complaint intake service of some sort. Could you
7 describe that, please?

8 A. A lot of the things that come in are
9 health related. A lot are not and would be
10 referred back to the general city complaint
11 intake.

12 They sort of sift through and pull out
13 health-related complaints and refer them to me for
14 decision as to whether it is indeed to be handled
15 by us or referred to someone else, consisting of
16 as I said maybe a bad house in a neighborhood full
17 of rats, strange odors.

18 Q. In your function as supervising the
19 intake of complaints, does that relate to
20 environmental complaints?

21 A. Occasionally they might be environmental.

22 Q. What types of environmental complaints
23 might you be responsible for?

24 A. Whenever possible initially we would

002482

1 refer them back over to the department -- what is
2 currently the Department of the Environment.

3 Q. So --

4 A. Upon --

5 Q. I'm sorry. Go ahead.

6 A. No.

7 Q. So if an environmental issue came to your
8 attention, you would typically refer that to the
9 Department of the Environment; is that correct?

10 A. Right. Occasionally they are unable to
11 deal with the problem or find the problem or
12 whatever and the calls continue to come in. At
13 that point I might have one of my people take a
14 look at it or I might take a look at it myself.

15 Q. When you say my people, are the people
16 you're referring to both the people that conduct
17 the inspections we discussed earlier --

18 A. No, that would be the health code
19 enforcement officers. The other people are office
20 personnel.

21 Q. You also mentioned that you have some
22 responsibilities relating to information
23 dispensing. What are those?

24 A. Those would generally be queries from

CO2483

1 citizens about clinic hours, availability of
2 appointments, immunization sites, times,
3 locations. Mainly service information.

4 Q. Do you dispense information relating to
5 environmental issues on a regular basis?

6 A. No.

7 Q. Do you typically dispense environmental-
8 related information at all?

9 A. Occasionally. From a large occurrence,
10 let's say, the citizens might call and want to
11 discuss the health aspects of what had happened:
12 how a fire in an aluminum plant, fumes coming off
13 of it, might affect their health, safety, or
14 welfare.

15 Q. And in those cases you might dispense
16 information relating to that particular event?

17 A. Right, or conceivably after -- well,
18 generally after an occurrence they would be
19 looking for guidance as to what happened or in
20 what way it might impact upon their well-being.

21 Q. In a situation like that where you have a
22 fire and you have fumes, would you also typically
23 contact the Department of the Environment to get
24 involved?

002484

1 A. Yes, at this point they certainly would
2 be involved, but they're not to the best of my
3 knowledge currently geared up to address the
4 immediate health aspects of it and it sort of
5 slopes on the environmental side.

6 I didn't mention earlier but I also am in
7 charge of the medical in -- infectious medical
8 waste ordinance here in the city.

9 Q. Do you typically get involved in
10 hazardous waste issues in your current position?

11 A. No.

12 Q. Do you get involved in issues relating to
13 the demolition of buildings in your current
14 position?

15 A. Occasionally.

16 Q. What type of involvement would you have
17 in a situation where a building is being
18 demolished?

19 A. Generally I would probably enter into the
20 case that was already under way from a referral
21 either from the other city agencies doing the case
22 they were working on it or from once again
23 complaints from citizens that the conditions are
24 just intolerable.

CG0485

1 Q. From a health standpoint?

2 A. Right.

3 Q. What aspect -- strike that.

4 What portion of your time would be
5 devoted to situations where health issues would
6 arise in conjunction with the demolition of a
7 building?

8 A. It's really spotty. Sometimes it would
9 be zero in a month and it could run up to probably
10 25 percent in a month.

11 Q. You also mentioned earlier that you have
12 some functions relating to what you termed as
13 nonroutine matters and you said that those relate
14 to businesses that aren't typically licensed.

15 What types of responsibilities do you
16 usually have in that situation?

17 A. Well, that would generally be addressing
18 the sanitary conditions in the facility spilling
19 over occasionally to a closed pharmacy and
20 somebody throwing all the drugs into the alley.

21 Q. Again that's typically a non-
22 environmental type issue?

23 A. I would look at it that way, but I guess
24 there's people that would say drugs laying in an

GG2186

1 open alley is an environmental issue.

2 Q. But in terms of environmental regulation,
3 that's not something you typically get involved
4 in; is that correct --

5 A. No, no.

6 Q. Are there any other responsibilities you
7 currently have at the Department of Health that we
8 haven't touched on?

9 A. Yeah, they stuck me with the smoking
10 ordinance.

11 Q. Sorry to hear that.

12 What functions do you have in relation to
13 the smoking ordinance?

14 A. The administration of it.

15 Q. Are there any other functions that you
16 have at the Department of Health that we have not
17 touched on?

18 A. Not that I recall but there may be some.

19 Q. Have you ever testified at an
20 administrative hearing or at trial?

21 A. Yes.

22 Q. About how many times have you testified
23 before?

24 A. I would think thousands.

003487

1 Q. What types of testimony do you typically
2 give? And I assume by the large number this is
3 something that is part of your routine?

4 A. Right, we routinely issue citations in
5 the enforcement of the ordinances I mentioned and
6 we have a regular court date.

7 Q. Have you ever given any testimony
8 relating to hazardous waste issues?

9 A. Yes.

10 Q. On how many occasions have you testified
11 relating to hazardous waste?

12 A. I really don't know. I would guess ten
13 maybe.

14 Q. What types of testimony did you provide
15 relating to hazardous waste on those ten or so
16 occasions?

17 A. Generally the conditions that exist at a
18 facility or a site, materials I observed,
19 conditions of those materials.

20 Q. So this might be the situation where you
21 inspected a facility, made observations, and then
22 later were asked to testify about it?

23 A. Either initiated or joined in an existing
24 court case, yes.

002488

1 Q. And in those situations you were
2 testifying as to personal knowledge you gained as
3 to those inspections, right?

4 A. Right.

5 Q. Did you ever testify regarding the
6 regulation of a particular material as a hazardous
7 waste?

8 A. I don't think so.

9 Q. Do you have expertise in the
10 environmental regulations as they relate to
11 hazardous waste?

12 A. No, not expertise.

13 Q. Have you ever given --

14 MR. TUCKMAN: Excuse me. You've been using
15 the word hazardous waste and he's been answering
16 questions based on hazardous waste. But there's
17 been no definition or no reference to any
18 definition in -- I'm just wondering if we're on
19 the same wavelength as your definition. His may
20 be the same. There should be some kind of
21 criteria as to what you consider hazardous, what
22 he considers hazardous.

23 MR. OSLAN: You're free to clear that up
24 later. I was using the term generically as it's

002489

1 regulated. Is that your understanding?

2 THE WITNESS: I understand the Illinois
3 Environmental Protection Agency's definition of
4 it.

5 BY MR. OSLAN:

6 Q. Have you ever testified relating to fly
7 dumping?

8 A. I'm pretty sure I have.

9 Q. Just for the record what is fly dumping?

10 A. The abandonment of unwanted materials
11 upon another person's property or the city's
12 property.

13 Q. Would you say that fly dumping is
14 typically unauthorized?

15 A. Yes.

16 Q. How many occasions have you testified
17 regarding fly dumping?

18 A. It's a little difficult. I would think
19 not too many. But there were periods when I had
20 great involvement with the pursuing of fly
21 dumpers, and it's just not clear in my mind as to
22 how many cases I actually got involved in more
23 than actually being on the street and following a
24 guy and attempting to grab him before he dumped

002490

1 his load off somewhere.

2 Q. In those occasions where you testified
3 regarding fly dumping, again were you testifying
4 to facts you gained in either an inspection or an
5 observation?

6 A. Yes, it would have been aluminum.

7 Q. I'd like to go back and discuss your
8 educational background.

9 Would you describe your education after
10 high school.

11 A. I had about a year of college, nights,
12 professional supervisors program at the University
13 of Chicago; I think an eight-week cram course at
14 Ohio State University sponsored by the United
15 States Department of Agriculture, a lot of FDA-
16 sponsored training courses, USDA-sponsored
17 training courses, a lot of in-service type things
18 at the department, some Illinois Department of
19 Agriculture stuff. That's probably most of it.

20 Q. You did not obtain your college degree;
21 is that correct --

22 A. No.

23 Q. Other than the one year of night college
24 and the eight-week course at Ohio State, have you

002491

1 had any formal educational training other than on-
2 the-job type training?

3 A. No.

4 Q. While in college did you have any courses
5 relating to environmental issues?

6 A. No.

7 Q. Did you have any courses in college
8 relating to health issues?

9 A. No, I don't think so.

10 Q. Approximately how many FDA training
11 courses have you had?

12 A. I think three large ones that went in
13 excess of a day or two.

14 Q. Typically what did the FDA courses
15 address?

16 A. Sanitation of food establishments,
17 restaurants, wholesale establishments, food and
18 grain storage facilities, bakeries.

19 Q. Any other areas that you can recall?

20 A. I think that's the general areas that the
21 FDA addresses and offers.

22 Q. How many in-service training sessions
23 have you attended?

24 A. Over the years that's really hard. I

002492

1 would guess probably twenty.

2 Q. What types of topics would be addressed
3 at an in-service training seminar?

4 A. Basically at the Health Department they
5 are health-related issues: everything from CPR
6 through management style techniques, supervisor's
7 role, policies and procedures.

8 Q. Did any of the in-service training
9 seminars you attended relate to environmental
10 issues?

11 A. No.

12 Q. You also mentioned that you attended some
13 seminars provided by the Illinois Department of
14 Agriculture?

15 A. They were mainly geared towards a meat
16 inspection program the city ran for approximately
17 ten years.

18 Q. Were there any other areas aside from
19 meat inspection that were addressed at the
20 Illinois Department of Agriculture seminars?

21 A. I don't think so, but there's a period in
22 there that I sort of broke off from the Illinois
23 Department of Agriculture and carried federal
24 compliance officer credentials from the USDA.

CG2493

1 Q. But in terms of the areas that were
2 covered at that -- at those seminars, meat
3 inspection was the primary area; is that correct?

4 A. Right, at those, yes.

5 Q. What was the first employment you had
6 after the year or so in college?

7 A. I think I worked for Jewel for about six
8 months as a meat cutter.

9 Q. What was the next position?

10 A. I spent a couple years with Kuppenheimer
11 Men's Clothing working for a traveling salesman.

12 Q. What was your next position?

13 A. That was with Armour & Company.

14 Q. The meat packing company?

15 A. Yeah, but this was a research facility in
16 freeze drying.

17 Q. What responsibilities did you have there?

18 A. I was a foreman.

19 Q. How long were you at Armour?

20 A. I don't know. Four years maybe, five.

21 Q. What was the position you held after
22 leaving Armour?

23 A. Sara Lee, once again a research facility
24 doing cryogenic freezing.

002494

1 Q. What position did you hold with Sara Lee?

2 A. I was a foreman.

3 Q. How many years were you employed by Sara
4 Lee?

5 A. I think two or three. They moved the
6 facility.

7 Q. What position did you hold after going to
8 work for Sara Lee?

9 A. National Blank Book Company.

10 Q. What kind of business are they in?

11 A. They manufacture stationery supplies,
12 notebooks, leather-bound books, writing paper.

13 Q. What position did you hold with National
14 Blank Book?

15 A. I ran their small manufacturing operation
16 here in Chicago.

17 Q. Did you have a title?

18 A. I think it was probably foreman but I had
19 three foremen working for me. Foreman/plant
20 manager. I'm not positive.

21 Q. How many years were you employed by
22 National Blank Book?

23 A. Two.

24 Q. What years were you employed by Blank

002495

1 Book?

2 A. That takes it up to about 1970 when I
3 went to work for the city.

4 Q. The next position you held after Blank
5 Book was working for the city?

6 A. Yes.

7 Q. As the foreman or plant manager --

8 A. No, no, it's not. I went with Wilson
9 Jones for about a year before coming to the city,
10 which was basically the same kind of operation as
11 National Blank Book.

12 Q. So after National Blank Book you went to
13 Wilson --

14 A. Wilson Jones.

15 Q. And after Wilson Jones you went to the
16 city?

17 A. Right.

18 Q. While employed by National Blank Book as
19 the foreman or plant manager for its manufacturing
20 operation, did you get involved in environmental
21 issues?

22 A. No.

23 Q. What type of business was Wilson Jones
24 in?

002496

1 A. The same type as National.

2 Q. What type of position did you hold with
3 Wilson Jones?

4 A. Foreman.

5 Q. Were you involved in manufacturing?

6 A. Yes.

7 Q. How many years? About a year?

8 A. Just about a year.

9 Q. Did you get involved in environmental
10 issues while at Wilson Jones?

11 A. No.

12 Q. Then after Wilson Jones you came to work
13 for the City of Chicago; is that right?

14 A. Yes.

15 Q. And is this approximately 1970?

16 A. Yes, July of 1970.

17 Q. What was the first position you held with
18 the City of Chicago?

19 A. Meat inspector.

20 Q. How long were you a meat inspector for
21 the City of Chicago?

22 A. I was in the program for ten years. I'm
23 thinking approximately four as a meat inspector,
24 and then I became the compliance officer still in

CG-137

1 the meat program and ran that through when the
2 city gave the program back to the state in 1980.

3 Q. So from July of 1970 until 1980 you were
4 involved in inspections and compliance relating to
5 health issues in the meat industry?

6 A. Health and sanitation regulation.

7 Q. You were not involved in environmental
8 issues I assume during that period?

9 A. No.

10 Q. In 1980 what position did you take?

11 A. I'm not positive what the title was, but
12 I started into this unusual area of things that
13 aren't specifically covered by other categories of
14 inspection.

15 Q. Would you describe yourself as a general
16 inspector during that period?

17 A. Yes, and we did some in-house stuff too,
18 some inventory control kind of stuff at all of our
19 facilities, inspection of our facilities.
20 Initially that's the way this little group got
21 started.

22 Q. And this was within the Department of
23 Health?

24 A. Yes.

CO2498

1 Q. The types of inspections you would do for
2 the Department of Health as a general inspector,
3 would those relate to these nonlicensed facilities
4 you mentioned earlier?

5 A. After a while. Initially we did a lot of
6 food inspection -- I don't know really how to say
7 it -- or reinspection; taking a look at how the
8 food section was operating and what they were
9 doing and some actual inspection and citing of
10 food establishments.

11 Q. How long did you hold this general
12 inspection position?

13 A. That -- basically it just sort of grew
14 into where we're at today so it's that same line.
15 I'm guessing we were probably in a transitional
16 state for maybe two years before things got
17 formalized.

18 Q. Was the first title you gained after
19 being a general inspector the title you have now,
20 supervising health code enforcement analyst?

21 A. Yes, and I'm not positive exactly when
22 that title kicked in. Prior to 1983 though.

23 Q. Have you ever attended an environmental
24 seminar?

002499

1 A. Yes, for a period of time I belonged to
2 the IEHA, Illinois Environmental Health
3 Association, and to the National Environmental
4 Health Association.

5 Q. When was that?

6 A. Probably from '85 through '90, '89 or
7 '90.

8 Q. How many environmental seminars did you
9 attend during that period?

10 A. Probably four.

11 Q. Do you recall generally the topics that
12 were addressed at those seminars?

13 A. They varied greatly. No, specifically I
14 do not recall.

15 Q. Were they primarily health-related
16 issues?

17 A. Generally, yes. I also administer the
18 city's St. Louis encephalitis surveillance program
19 which is a mosquito program in the summer months.

20 Q. That's part of your current
21 responsibilities?

22 A. Yes.

23 Q. At any of the seminars or courses you've
24 taken over the years has the area of public

007500

1 nuisance been addressed?

2 A. I would certainly assume so. I can't say
3 yes specifically on this one or no, but with the
4 health -- environmental health a lot of the
5 concerns were public nuisances.

6 Q. But as you sit here you can't recall any
7 specific discussions about --

8 A. I don't remember a specific topic of a
9 talk or lecture.

10 Q. In your employment experiences over the
11 years have you been involved in situations where a
12 particular property has been alleged to be a
13 public nuisance?

14 A. Yes.

15 Q. On how many such occasions?

16 A. I have no idea. Let's say a hundred.

17 Q. What typically has been your involvement
18 in those cases where public nuisance is alleged to
19 exist on a property?

20 A. Our involvement would be from the health
21 aspects, that the condition that exists is
22 detrimental to the health of the citizens or the
23 neighbors or to a specific person. But public
24 nuisance goes way on from there.

002501

1 Specifically here in the city we address
2 the keeping of bees, the overgrowth of lawns, the
3 fly dumping, lead paint, stagnant water in a
4 swimming pool.

5 Q. The focus of your involvement in these
6 cases though relates to whether a situation is
7 detrimental to health; is that correct?

8 A. Right, it would be -- we would not
9 routinely initiate a case against a house as a
10 public nuisance. We would join in an existing
11 case that the Building Department or the citizens
12 thought was more severe than a normal, routine
13 building nuisance complaint.

14 Q. Does the Department of Health typically
15 engage in sampling to determine whether there's a
16 situation that is detrimental to health?

17 A. They routinely sample food, milk. We
18 will accept in that complaint section samples from
19 citizens that are concerned about something being
20 wrong, either being spoiled or contaminated. Our
21 lead paint section routinely samples paint and the
22 medical function of course is...

23 Q. Does the Department of Health have its
24 own laboratory to analyze these samples?

CO2502

1 A. Yes.

2 Q. Does the Department of Health have a
3 laboratory that is suitable for testing and
4 analyzing samples of soil that may or may not be
5 contaminated with some particular substance?

6 A. Depending on the substance.

7 Q. Are there certain substances that are not
8 within the Department of Health's ability to
9 sample?

10 A. Yes.

11 Q. Do you recall which ones those are?

12 A. I --

13 Q. Quite a few of them?

14 A. We have lost some of our pesticide
15 capability. Some of the toxins, some of the
16 poisons are real hard to run and those we would
17 send to the Illinois Department of Public Health
18 state laboratory to run.

19 Q. I take it by your reference to lead paint
20 that the Chicago Health Department has the ability
21 to test for lead; is that correct?

22 A. Yes.

23 Q. Is that true with respect to lead in
24 soils?

005503

1 A. Yes.

2 Q. How long has that been the case?

3 A. I really don't know.

4 Q. Do you know if that has been the case
5 throughout the entire period of the 1980s?

6 A. I would say I know that to be the case
7 from '83 on, but how much prior to that I don't
8 know.

9 Q. Are you familiar with the legal
10 definition of public nuisance?

11 A. I have seen it. I've read it. I don't
12 know that I could quote it.

13 Q. Do you feel qualified to say when a
14 situation is or is not a public nuisance?

15 A. Within the areas I normally deal with,
16 yes.

17 Q. And those areas are primarily the food
18 service area -- what others?

19 A. The general conditions in the city. I
20 have not run across an area that I have felt
21 unqualified to deal with in the things that I
22 normally routinely do. As I said, may be fly
23 dumping one day; it may be a hotel/motel another.
24 It could involve a funeral home. It could involve

CGF504

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1 a beauty or barbershop or the conditions in the
2 alley.

3 The assessment of the -- the initial
4 assessment of the situation I feel comfortable
5 with and I'm not -- I've got expertise to go to.

6 Q. Are you typically the person at the
7 Department of Health that makes the decision on
8 whether a site is or is not a public nuisance?

9 A. I don't know that anyone else does
10 outside of my section.

11 Q. What is your understanding of the legal
12 definition of public nuisance?

13 A. Well, it's specifically laid out in the
14 ordinance I enforce. The city has a nuisance
15 ordinance and they spell out what the nuisances
16 are. IEPA has a section of Chapter 111 and a half
17 that spells out what a nuisance is.

18 The point at which it's not specifically
19 addressed in either the statute or the ordinance,
20 I would contend that it was a nuisance that it
21 endangered the public health if it did indeed do
22 so.

23 MR. OSLAN: Could we take about a five-minute
24 break.

1 (Short recess.)

2 BY MR. OSLAN:

3 Q. Mr. Cieslik, you're not an environmental
4 expert, correct?

5 A. Correct.

6 Q. You're not a toxicologist; is that
7 correct?

8 A. Correct.

9 Q. And you're not an environmental engineer;
10 is that correct?

11 A. Correct.

12 Q. And, Mr. Cieslik, you're not an expert in
13 public nuisances; is that correct?

14 A. Correct.

15 Q. And you're not an expert in building
16 demolition; is that correct?

17 A. Correct.

18 Q. I take it you're not an expert in
19 environmental cleanups?

20 A. Correct.

21 Q. You're not an expert in lead paint
22 manufacturing; is that correct?

23 A. Correct.

24 Q. And, Mr. Cieslik, you're not an expert in

CG2506

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1 the maintenance of paint manufacturing operations;
2 is that correct?

3 A. Correct.

4 Q. What was your first involvement with the
5 former Dutch Boy property on the South Side of
6 Chicago?

7 A. The department was notified of a lead
8 poisoning of an individual scavenging the site and
9 the involvement of I believe two children. I
10 first became involved I believe on May 15, 1986,
11 at a meeting that took place on site.

12 Q. Your first involvement with the former
13 Dutch Boy site was approximately May 15, 1986,
14 correct?

15 A. Yes.

16 Q. And prior to May 15, 1986, you had no
17 involvement with that property; is that correct?

18 A. Correct.

19 Q. You have no personal knowledge of any
20 operations at the site prior to May 15, 1986,
21 correct?

22 A. Correct.

23 Q. You have no knowledge of conditions of
24 the property prior to May 15, 1986, correct?

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1 A. Correct.

2 Q. You have no knowledge of maintenance
3 practices at the site prior to May 15, 1986,
4 correct?

5 A. Correct.

6 Q. You have no knowledge of ARTRA's
7 activities at the property, correct?

8 A. Correct.

9 Q. You have no knowledge of NL Industries'
10 activities at the property, correct?

11 A. Correct.

12 Q. You have no knowledge of the condition of
13 the property at the time NL Industries transferred
14 the property to ARTRA in 1977, correct?

15 A. Correct.

16 Q. You have no knowledge of any hazardous
17 substances if any at the property when NL
18 transferred the site to ARTRA in 1977, correct?

19 A. Correct.

20 Q. You have no knowledge of the condition of
21 the property when ARTRA transferred the property
22 in 1980, correct?

23 A. Correct.

24 Q. You have no knowledge whether ARTRA

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1 maintained the property between 1977 and 1980,
2 correct?

3 A. Correct.

4 Q. You have no knowledge of whether the site
5 was a nuisance when NL owned it, correct?

6 A. Correct.

7 Q. You have no knowledge of any treatment of
8 hazardous substances at the site prior to May 15,
9 1986, correct?

10 A. Correct.

11 Q. You have no knowledge of what containers,
12 security measures, or safeguards were used by NL
13 Industries at the site, correct?

14 A. Correct.

15 Q. You said there was a meeting at the site
16 on May 15, 1986. Who called that meeting?

17 A. I'm not sure. Mike Orloff of the
18 Illinois Environmental Protection Agency called
19 the department to inform us of it.

20 Q. What was Mr. Orloff's position at that
21 time?

22 A. I'm not sure what they called the
23 position but I think he's still in it. It's like
24 community relations or public information.

002509

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1 Q. As far as you know Mr. Orloff is still
2 working for IEPA?

3 A. Yes.

4 Q. What was the purpose of the meeting that
5 was held at the property on May 15 of 1986?

6 A. Site assessment I think it was called.

7 Q. Were you involved in the site assessment
8 on or about May 15, 1986?

9 A. Yes.

10 Q. What function or what did you do to
11 assess the site on that date?

12 A. We walked the site.

13 Q. Did you take any samples at that time?

14 A. No.

15 Q. There were other people at the site I
16 assume other than Department of Health people?

17 A. Yes.

18 Q. Did they take samples at the site?

19 A. No, not on May 15.

20 Q. Can you describe the condition of the
21 site on May 15, 1986, as you recall it?

22 A. It's a pretty big site. It was a
23 partially -- let's start at the corner of 120th
24 and Peoria. There was a partially demolished

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1 brick wall that ran south from 120th and west from
2 Peoria. At the edge of that wall was a chain-link
3 gate and then some fencing that ran to the
4 property line.

5 On the interior of that wall was a lot of
6 debris, the remnants of a bag house -- a bag house
7 system, a vacuum house system, a dust collector --
8 a couple of pits that contained I believe
9 furnaces. The backside going once again west
10 there was like a loading dock ramp, some railroad
11 tracks. Going a little further south there were a
12 couple of small buildings like a pump house.

13 Then we get into an elevated section that
14 a railroad spur ran off of -- two elevated
15 sections actually that went to the south end of
16 the property. We come back north a little bit on
17 Peoria and we get to that I think three- or four-
18 story building, concrete floors and concrete
19 pillars rising up. There were some holes in the
20 floors, partially dismantled equipment, pipes,
21 electrical wiring, a flooded basement with some
22 large tanks in it.

23 There was a row of above-ground tanks
24 somewhere near this railroad spur that came in.

CG7511

1 Quantities of a white powder -- a large quantity
2 of white powder in the area of the bag house
3 system and in some of the equipment in the
4 building I remember, and a lot of the pipes
5 covered with insulation that we thought may or may
6 not have been asbestos.

7 That's about all I can remember about
8 that initial visit.

9 Q. Is it fair to say that at the time of
10 your visit on May 15, 1986, the site was being
11 demolished?

12 A. That is certainly the impression I got,
13 yes.

14 MR. OSLAN: I'd like to ask you to do
15 something for me which is to draw a diagram to
16 help me understand what you just described about
17 the condition of the property and where --
18 particularly where things were. I think we can go
19 off the record.

20 (Discussion off the record.)

21 MR. OSLAN: Let me step around by you and you
22 can describe some of these features for me, and
23 maybe by the use of numbers we can identify for
24 the record some of the key observations you made

002512

1 in May of 1986.

2 You mentioned that there was a chain -- a
3 partially demolished brick wall --

4 THE WITNESS: It would be from here to here
5 (indicating).

6 MR. OSLAN: Would you mark that as No. 1 on
7 the chart.

8 (Witness complies.)

9 THE WITNESS: You mentioned that there was a
10 chain link gate or fencing on the property. Would
11 you mark that as No. 2.

12 (Witness complies.)

13 MR. OSLAN: You mentioned that inside the
14 brick wall there was a lot of debris. Would you
15 mark that as No. 3.

16 (Witness complies.)

17 BY MR. OSLAN:

18 Q. And that was throughout that area?

19 A. Yes.

20 MR. OSLAN: You mentioned that there were
21 remnants of a bag house and a dust collector.
22 Would you mark that as No. 4.

23 (Witness complies.)

24 THE WITNESS: You mentioned that there was

1 were a couple of manholes on the top of it so I'm
2 not sure if they were using it for loading or...

3 MR. OSLAN: You mentioned that there was a
4 three- or four-story building on the property.
5 Could you mark that as No. 9.

6 (Witness complies.)

7 MR. OSLAN: You mentioned that there were a
8 row of above-ground tanks. Could you describe
9 those as No. 10.

10 (Witness complies.)

11 MR. OSLAN: You mentioned a quantity of white
12 powder near the bag house. Would you describe
13 that by using the number 11.

14 (Witness complies.)

15 BY MR. OSLAN:

16 Q. And you mentioned asbestos that came from
17 the insulation of the building. Where was that
18 located?

19 A. On various floors in the building.

20 Q. In the building, okay.

21 A. There were some pipes as I recall on the
22 ground but all kinds of debris.

23 Q. And you've marked that as No. 12?

24 A. Yes.

C02514

1 MR. OSLAN: Thanks very much. Let's mark this
2 as Cieslik Exhibit No. 1.

3 (Whereupon, Deposition
4 Exhibit No. 1, Witness
5 Cieslik, was marked
6 for identification.)

7 BY MR. OSLAN:

8 Q. Is it your understanding that the
9 asbestos on the property came from the insulation
10 in the piping inside the three- or four-story
11 building on the property?

12 A. No, I don't know if it came from that
13 building or the shell of a building which sat on
14 the corner of 120th and Peoria.

15 Q. But as far as you know the asbestos came
16 from insulation from one of those buildings,
17 correct?

18 A. It would be my guess that that was its
19 source, yes. I don't know where it came from.

20 Q. What was the result of this May 15, 1986,
21 meeting?

22 A. That the IEPA would sample the materials
23 on the property.

24 Q. Did IEPA take responsibility for the

1 site?

2 A. No, they were just going to sample the
3 materials on the site.

4 Q. Did they take some samples on the site at
5 that time?

6 A. Not on the 15th of May. At some
7 subsequent time.

8 Q. Were you kept informed of the results of
9 their sampling?

10 A. I was there with them when they took it.
11 I just don't know exactly what day it was.

12 Q. How many times have you been to the
13 property in question?

14 A. Hundreds.

15 Q. What was the next involvement you had
16 with the property after the May 15, 1986, meeting?

17 A. I returned with IEPA when they were going
18 to do their sampling.

19 Q. What was the purpose of your attendance
20 at that sampling event?

21 A. I went -- well, my first intention with
22 the property was to attempt to discourage the
23 people scavenging the site to stay off the
24 property so we did not get another lead poisoning

CG0516

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1 case, so I don't know if this was one of my -- if
2 I would have been there myself anyway or it was
3 just when they came. I don't recall how I
4 actually was there when they did the sampling.

5 Q. These scavengers you mentioned, what were
6 they doing on the property?

7 A. Dismantling pipes, bag house metal,
8 beams, scrap iron, whatever they could -- whatever
9 metal they could glean from the property.

10 Q. Was it your understanding at the time
11 that those scavengers were authorized to be there
12 by the current property owner?

13 A. I --

14 MS. MARTIN: I'm sorry, I was writing and I
15 didn't hear the question. Could you repeat it or
16 read it back?

17 MR. OSLAN: I can repeat it.

18 BY MR. OSLAN:

19 Q. Was it your understanding that the
20 scavengers were on the property with the
21 permission of the property owner?

22 A. At some point in time that fact was
23 brought to my attention or that fact was alleged
24 by the scavengers.

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1 Q. The scavengers told you that they were
2 authorized to be there?

3 A. They told me -- they explained a story to
4 me that the owner had started to demolish the
5 building with a wrecking company, Wrip Wrecking,
6 and that he had run out of money and they had
7 stopped demolishing the building; and the owner
8 told them they can go ahead and take the rest of
9 the building down themselves, but I don't know
10 exactly when that conversation took place.

11 Q. But it was sometime after --

12 A. After the 15th.

13 Q. Of May 1986?

14 A. Right, and then I just pursued the fact
15 that if you continued to do this you're going to
16 end up in the hospital and you're probably going
17 to have your family in the hospital with you, and
18 it took awhile but we narrowed it down so when I
19 would come over I would very seldom see any of the
20 people I was familiar with scavenging the
21 property.

22 Q. What was the concern you had about the
23 property at that time?

24 A. Well, it appeared to us that the people

002518

1 that had gotten sick and gone to Cook County
2 Hospital for treatment after an initial review of
3 their home, that the source of the problem was
4 something other than their home and that the
5 individual's only activity outside of the home
6 that we could determine at that time was at the
7 Dutch Boy site. We assumed that the problem was
8 coming from there and we didn't want them doing it
9 anymore until we further assessed the site.

10 Q. Was there a particular condition at the
11 property that you assumed was somehow related to
12 these health problems?

13 A. Well, it seems to me either the first or
14 the second time I found them there they were using
15 an acetylene torch to cut up the bag house pipes.

16 Q. I'm sorry, to cut up what?

17 A. The duct work from the vacuum bag house
18 system.

19 Q. What was it about that activity that
20 caused you some concern?

21 A. That equipment was heavily encrusted with
22 this white powder that I had mentioned earlier,
23 and just as a wild guess I thought it might be
24 lead-bearing paint pigment.

002519

1 Q. And your concern was that they were being
2 exposed to the lead in this white powder?

3 A. Well, the fumes that would come up. They
4 were obviously vaporizing this powder.

5 Q. The combination of using the torch in
6 conjunction with the white powder was the concern
7 you had at the time?

8 A. Right. Lead poisoning is either
9 ingestion or inhalation.

10 Q. Were there any other substances on the
11 property that raised a health concern in your
12 mind?

13 A. Not that I had observed as of that period
14 of time.

15 Q. So in May of 1986 the concern you had
16 about the property was lead; is that correct?

17 A. Lead and asbestos in those first -- say
18 that first week.

19 Q. Did the condition of the property change
20 from your first visit on May 15 of 1986 to the
21 second visit with IEPA?

22 A. Minimally. That would have been a day or
23 two I believe.

24 Q. How many samples did IEPA take on that

007520

1 visit?

2 A. I don't know.

3 Q. Was it more or less than 25?

4 A. If I had to grab a figure I'd grab 25.

5 MS. MARTIN: Don't grab any figure. If you
6 don't know, you don't know.

7 THE WITNESS: Okay, I don't know.

8 BY MR. OSLAN:

9 Q. Did you ever receive a copy of the
10 results of IEPA's sampling in 1986?

11 A. Yes.

12 Q. What did those samples show with respect
13 to the property?

14 A. Well, I know they confirmed the presence
15 of lead and they confirmed the presence of
16 asbestos. That's all I recall.

17 Q. Was there anyone present at the sampling
18 event with IEPA other than IEPA representatives
19 and yourself?

20 A. I don't know.

21 Q. What was the next involvement you had
22 with this property after IEPA's sampling?

23 A. Well, at the same time they sampled I
24 took some samples.

1 Q. Where did you sample on the property?

2 A. I don't specifically remember. I know
3 for sure some of that white powder from the bag
4 house area, some of another powder probably white
5 from the building itself, a piece of what I
6 thought might be asbestos off I believe the floor
7 of the building.

8 Q. Approximately how many samples did you
9 take?

10 A. Maybe six, and the asbestos which was a
11 separate destination for analysis.

12 Q. Why did you take samples in addition to
13 the samples that IEPA was taking?

14 A. To the best of my recollection it was
15 because of a stated long turnaround time for
16 analysis at the state's laboratory, and I was very
17 concerned about the condition of the property and
18 wanted to confirm presence or absence of lead and
19 asbestos as quickly as possible so that if the
20 state did not act in a timely manner, the
21 commissioner of health could seal the property to
22 keep the people off of it.

23 Q. What were the results of the samples you
24 took in May of 1986?

CO2522

1 A. Asbestos was confirmed by the Water
2 Department's laboratory and heavy lead
3 concentrations were confirmed by our Health
4 Department's laboratory.

5 Q. Do you recall taking any samples of
6 materials you suspected containing lead other than
7 the white powder?

8 A. Not at that time but at a point later in
9 the process that summer I took soil samples from I
10 believe on the property and just off of the
11 property.

12 Q. Do you know approximately when you took
13 those samples?

14 A. I'd have to refer to my notes. I don't
15 remember at all.

16 Q. Do you maintain in your office notes of
17 site visits you make?

18 A. Usually. If it's absolutely nothing
19 negative I probably wouldn't make a note that I
20 took a ride out there. But if there's anything
21 developing, yes.

22 Q. For example if you were going to take
23 samples at a property, would you make some notes
24 about that?

002523

1 A. Yes.

2 Q. Where do you keep your notes?

3 A. Usually in a file specifically governing
4 that occurrence.

5 Q. Have you maintained since May 15 of 1986
6 a file on this property?

7 A. Yes.

8 Q. Approximately how large a file is that
9 now?

10 A. Two and a half, 3 inches.

11 Q. Does that file contain notes that you
12 have taken over the years?

13 A. Yes.

14 Q. Do you have notes of some of these visits
15 you made to the property?

16 A. Some, not many.

17 Q. What else is in that file?

18 A. Lab results, EPA results, newspaper
19 articles, blood lead results.

20 Q. I understand that you were involved in
21 responding to NL's request for production of
22 documents in this case?

23 A. Yes.

24 Q. Did you review your file completely in

1 responding to those requests?

2 A. Yes.

3 Q. Can you think of any documents that you
4 did not produce out of that file?

5 A. No.

6 Q. So we have every document in your file,
7 correct?

8 A. Every document in my file, yes.

9 Q. What was your involvement in the property
10 after the sampling events with IEPA?

11 A. Once my lab results came back we started
12 a discussion about how the site should be handled:
13 could EPA seal it, could they do this, could they
14 do that. We weren't even sure who owned it yet.
15 I remember contacting our corporation counsel and
16 asking them to check around and them telling me
17 that, yes, there is an active court case on the
18 property.

19 So that appeared to be the simplest way
20 of, shall we say, gaining control or securing the
21 property. I as the Health Department and EPA
22 joined into that case through the corporation
23 counsel.

24 Q. The lawsuit that was pending relating to

005525

1 this property in 1986 was filed by whom?

2 A. The Building Department of the City of
3 Chicago I believe.

4 Q. Do you know what the subject matter of
5 that lawsuit was?

6 A. I think the demolition of the buildings.

7 Q. Do you know what relief was sought in
8 that lawsuit?

9 A. Not really.

10 Q. But you and IEPA -- your department and
11 IEPA intervened in that lawsuit?

12 A. To secure from the judge an order to
13 enter that property and do something about the
14 conditions that existed rather than having IEPA go
15 through their long, drawn-out process of
16 attempting to gain permission or something like
17 that.

18 Q. Were you successful in obtaining an order
19 allowing the Department of Health onto the
20 property?

21 A. Yes.

22 Q. In the chronology of events of this
23 property, what month are we into roughly now?

24 A. We are just getting into the edge of June

002576

1 or maybe just into June.

2 Q. 1986?

3 A. Right.

4 Q. What was your next involvement with the
5 property after becoming involved in the pending
6 lawsuit filed by the Department of Buildings
7 against the present property owner?

8 A. Somewhere right in this time frame also
9 the Department of Health conducted a mass blood
10 screening -- blood lead screening of the
11 residents, former employees, some firemen, and at
12 some point in time the personnel of the contractor
13 that was going to clean the site.

14 Q. Were you responsible for the Department
15 of Health's blood lead screening?

16 A. No.

17 Q. Who at the Department of Health was
18 responsible for the blood lead screening?

19 MS. MARTIN: Are you looking for a name?

20 MR. OSLAN: Yeah.

21 THE WITNESS: I'm not positive exactly who was
22 responsible but I believe Joan Nigh was heavily
23 involved. I remember several conversations with
24 her.

CG2527

1 BY MR. OSLAN:

2 Q. How many people were tested by the
3 Department of Health for blood lead levels?

4 A. I don't know total count.

5 Q. Do you have an approximate number?

6 A. I may be totally wrong but there's a
7 bunch of them in my file. I don't know that
8 that's all of them. I'm thinking 300.

9 Q. Do you recall whether there were any
10 conclusions reached as a result of that blood lead
11 study?

12 A. Regarding what kind --

13 Q. Let me ask you a better question.

14 Did the Department of Health reach any
15 conclusions about this particular property as a
16 result of the blood lead study that you recall?

17 A. I don't think so, no.

18 Q. What month of 1986 did the Department of
19 Health conduct its blood lead screening?

20 A. I'm thinking June but I'm not positive.
21 It was early on.

22 Q. Was the Illinois Environmental Protection
23 Agency doing anything during that time period as
24 far as you know?

002528

1 A. Yes, as we got that court order that then
2 gave them the authority to go ahead and start with
3 whatever phase they started with of an immediate
4 action on the property. I'm thinking right in
5 that first or second week of June with that court
6 order they went ahead and officially sealed the
7 property and took control of it.

8 Q. IEPA, having obtained access to the site
9 from the court, then began to take measures to
10 address the threats on the property; is that
11 correct?

12 A. I think so but I'm not positive. They
13 may have also acquired permission from Mr. Tarr.
14 I don't know. There was a lot of interplay
15 between the corporation counsel and the agency's
16 attorneys.

17 Q. But in the summer of 1986 IEPA's
18 intention was to take measures to address any
19 threats that might be posed by the property; is
20 that correct?

21 A. Yes, yes, there was a cleanup in progress
22 in the summer of 1986.

23 Q. Were you involved either actively or --

24 A. I would say more passively than actively

1 but, yes, I would visit the site regularly to see
2 where we were and what was going on.

3 Q. You anticipated my question.

4 So you were somewhat involved in IEPA's
5 cleanup of the property, correct?

6 A. Not officially but passively.

7 Q. Did you have discussions with the IEPA
8 personnel conducting the cleanup from time to
9 time?

10 A. I'm sure I did.

11 Q. Were you generally aware of the measures
12 they were taking and the conclusions they had
13 reached regarding the property?

14 A. The measures they were taking. I don't
15 know if I were privy to the conclusions they had
16 reached.

17 Q. Did you ever have occasion to disagree
18 with some decision that IEPA made regarding that
19 property?

20 A. I don't think so.

21 Q. Over what period of time did IEPA take
22 measures to address the threat that existed or the
23 perceived threat that existed at that property?

24 A. Into late '86. Then it got too cold to

CG0530

1 really do much out there, and then it started
2 again in the spring of '87 and went to I think the
3 early fall of '87.

4 Q. In the early fall of 1987 IEPA completed
5 its efforts to address the threat at that site; is
6 that correct?

7 A. At this point, the fall of '87, I get
8 pretty fuzzy because basically I think that the
9 basic perceived threat that I saw was beginning to
10 wind down and I'm sure there's some other major
11 project that came up that I got involved in.

12 Q. So sometime prior to the fall of 1987
13 your concerns about the property had been
14 addressed so that you went on to other matters?

15 A. It had majorly been addressed, yes.

16 Q. And your concern was lead and asbestos,
17 right?

18 A. Well, that was the initial concern. As
19 we got further -- let's go back to June of '86.

20 As we got further into the project we
21 became aware of some underground storage tanks,
22 some tanks in a flooded basement, tanks.

23 Q. As part of IEPA's efforts at the site did
24 they address whatever materials were in those

002531

1 tanks?

2 A. After we located them I know they sampled
3 them. I believe most of the '87 project addressed
4 those tanks and the final wash-down and demolition
5 of what they did demolish, that free-standing wall
6 and wash-down of the structure that's still
7 standing there.

8 Q. Did you make periodic visits to the site
9 throughout IEPA's efforts to address the threats
10 there?

11 A. Yes.

12 Q. Can you describe the specific measures
13 IEPA took at the site to correct any problems
14 there?

15 A. Well, they hired an environmental
16 contractor and they removed the debris -- just
17 about everything because I think a decision at
18 some point had been made that it's easier to
19 remove it than try to clean it. They had normal
20 safeguards in place, whatever was environmentally
21 correct at that point in time.

22 Basically what I did was sort of
23 interface between IEPA and the city services
24 required to keep things rolling out there.

002532

1 Q. For example you mentioned they washed
2 down the building?

3 A. At some point in time, yes, they power-
4 washed the building.

5 Q. What was the purpose of washing down the
6 building?

7 MS. MARTIN: If you know.

8 THE WITNESS: Decontamination.

9 BY MR. OSLAN:

10 Q. IEPA completed that wash-down?

11 A. Well, their contractor, through their
12 contractor.

13 Q. But that job of washing down the building
14 in an effort to decontaminate it, that was
15 completed, correct?

16 A. To the best -- I don't know.

17 Q. You mentioned that IEPA addressed some of
18 the materials in the tanks on the property.

19 As far as you know was that completed?

20 A. I don't know. I saw it in progress but I
21 don't know.

22 MR. OSLAN: Let's mark that as Exhibit 2.

23

24

002533

1 (Whereupon, Deposition
2 Exhibit No. 2, Witness
3 Cieslik, was marked
4 for identification.)

5 MR. OSLAN: Mr. Cieslik, I've handed you
6 what's been marked Cieslik Exhibit No. 2. It's a
7 letter from the Illinois Environmental Protection
8 Agency signed by Mary E. Dinkel to Alderman Lemuel
9 Austin and you're shown as a carbon copy recipient
10 of this letter.

11 BY MR. OSLAN:

12 Q. Do you recall receiving this letter?

13 A. Not really.

14 Q. Do you have any reason to believe you
15 haven't received this letter?

16 A. No, I just don't recall receiving it.

17 Q. This letter details in the first two
18 paragraphs -- summarizes in the first two
19 paragraphs the measures taken by IEPA to address
20 threats of the property would you agree?

21 A. Yes.

22 Q. And I believe consistent with what you
23 said earlier, the second paragraph discusses an
24 immediate cleanup of lead dust and asbestos at the

1 site in June of 1986, correct?

2 A. Yes.

3 Q. Do you happen to recall what areas of the
4 property were cleaned up in June of '86?

5 A. Well, the majority of the work took place
6 in the structure that's still standing and within
7 the confines of the brick wall, free-standing
8 brick wall where most of the debris had been
9 piled, the general area (indicating).

10 Q. Is it your recollection that in June of
11 1986 IEPA essentially picked those materials up
12 off the site and shipped them to some other
13 location?

14 A. Yes, they were to the best of my
15 recollection transported to Peoria.

16 Q. And this removal/cleanup that was done in
17 June of 1986 was intended to address the lead dust
18 that you testified about earlier and the asbestos
19 from the coating of the piping?

20 A. Yes.

21 Q. In the third full paragraph on Exhibit 2
22 there's some discussion of a subsequent cleanup by
23 IEPA in November 1986 and continuing until January
24 1987. Now this is described as a comprehensive

002535

1 cleanup that included a partial demolition of
2 deteriorated structures, complete removal of all
3 process equipment and surface debris.

4 Do you recall visiting the site during
5 IEPA's comprehensive cleanup during late '86 and
6 early '87?

7 A. That time frame doesn't seem right to me.

8 Q. You mentioned earlier I think that you
9 thought it was a little later in 1987.

10 A. Yeah, because as we then went ahead with
11 this -- as they went ahead with their
12 comprehensive cleanup, the pumping of the basement
13 was required and there's no way we could have
14 pumped water in December or January. I remember a
15 big filtering system for this water that had been
16 set up out of a 30-yard garbage container and
17 water flowing, and I find that hard to put in
18 perspective. I don't deny that it occurred. It
19 just doesn't...

20 Q. Well, putting the days aside for the time
21 being, did you happen to visit the site during
22 IEPA's comprehensive cleanup in which they
23 partially demolished a deteriorated structure --

24 A. Yes.

002536

1 Q. -- and completely removed all process
2 equipment and surface debris?

3 A. Yes.

4 Q. At the end of that process, at the time
5 that IEPA completed this comprehensive cleanup,
6 was the site without any debris on the property as
7 you recall?

8 A. Again I have trouble with the time frame
9 because as this is occurring we're getting into
10 the tanks and seems to me that the tanks went on a
11 long time after the rest of it was done.

12 Q. Let me ask you a little different
13 question then.

14 Focusing just on the surface of the
15 property, at the end of IEPA's comprehensive
16 cleanup do you recall observing the property as
17 being without debris, being essentially clean on
18 the surface?

19 A. Essentially, yes.

20 Q. Do you recall anything specific on the
21 surface that resulted after IEPA's comprehensive
22 cleanup?

23 A. No.

24 Q. Exhibit 2 notes that at the end of IEPA's

005537

1 comprehensive cleanup, "the site was considered
2 surficially remediated of all lead contamination,"
3 and that's consistent with what you just said,
4 correct?

5 A. Yes.

6 Q. Ms. Dinkel continues in Exhibit 2 to
7 express some concern over the apparent deposit or
8 dumping of materials on the site after IEPA's
9 cleanup in that fourth paragraph?

10 A. Yes, and that's what leads me to believe
11 I never saw this letter because I had had at their
12 request that property cleaned by Streets and
13 Sanitation a couple of times.

14 Q. Let me ask a little more general
15 question.

16 Periodically after IEPA's comprehensive
17 cleanup have materials been dumped on this site?

18 A. Yes.

19 Q. What types of materials have been dumped
20 on this site since IEPA's cleanup in 1987, 1986?

21 A. I would generally just call it garbage,
22 refuse. That's the same material -- basically the
23 same material that was there the first day I saw
24 it and had to get Streets and San to move it so we

002538

1 could move around.

2 Q. In the second-to-last full paragraph on
3 the first page of Exhibit 2, Ms. Dinkel describes
4 IEPA's concern over continued dumping on the
5 property after its cleanup and states that one
6 concern is for preventing another safety and
7 health threat due to rodent infestation, fire
8 hazard, and general safety hazards and the
9 necessity to perform future work at the site by
10 the agency.

11 Do you recall having any discussions with
12 anyone about what might be required to clean the
13 property up again after IEPA's cleanup as a result
14 of fly dumping?

15 A. No.

16 Q. Have you seen any samples of the property
17 taken since IEPA's cleanup in 1987?

18 A. You mean results of samples?

19 Q. Yes.

20 A. Yes.

21 Q. What samples have you seen since IEPA's
22 cleanup in 1987?

23 A. I believe it's Toxicon's (phonetic)
24 sampling report for NL.

002539

1 Q. It's your recollection that that sampling
2 occurred after IEPA was completed?

3 A. Yes.

4 Q. Have you seen any sampling other than the
5 sampling that was performed by Toxicon?

6 A. No.

7 (Short recess.)

8 BY MR. OSLAN:

9 Q. Mr. Cieslik, have you had any discussions
10 with anyone concerning this lawsuit?

11 A. Arlene.

12 Q. How many conversations have you had with
13 Ms. Martin?

14 A. Seven or eight.

15 Q. Do you recall the first conversation you
16 had with Ms. Martin regarding this lawsuit?

17 A. Yes.

18 Q. Do you recall when it was?

19 A. Mid to late fall of '91 probably.

20 Q. Do you recall whether it was before or
21 after the lawsuit was filed?

22 A. I don't really know when the lawsuit was
23 filed.

24 Q. The lawsuit was filed on May 16 of 1991.

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1 A. It would have been after I'm pretty sure.

2 Q. To your recollection you were not
3 consulted prior to the filing of this lawsuit; is
4 that correct?

5 A. Correct.

6 Q. Have you met with anybody else to discuss
7 this lawsuit other than Ms. Martin?

8 A. Not the suit.

9 Q. Have you met with anyone else to discuss
10 the site?

11 A. Not specifically the site. I have
12 refreshed my memory with some of our laboratory
13 people. Had a couple questions about values,
14 limits, and things like that.

15 Q. When did these discussions take place?

16 A. Probably the majority of them within the
17 last two weeks.

18 Q. Who did you speak with during the last
19 two weeks relating to this lawsuit or the site
20 specifically?

21 A. Dr. Ronald Foreman.

22 Q. Anyone else?

23 A. Rhonda Mutz, Kato Cursity, Frances
24 Ginther, David Coster, Susan Jacobs, John Eversol,

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1 Mark Limanni. I think that's it.

2 Q. Who is Dr. Foreman?

3 A. He's a pharmaceutical toxicologist in
4 charge of our toxicology section, Chicago
5 Department of Health.

6 Q. When did you speak with him?

7 A. Tuesday and Wednesday probably for a few
8 minutes each time.

9 Q. Was there anyone else present during your
10 conversations with Dr. Foreman?

11 A. No.

12 Q. What did you and Dr. Foreman discuss?

13 A. The samples I originally took that he ran
14 and the values and results and interpretation of
15 those figures, changes in the new state lead
16 poisoning law versus the old state lead poisoning
17 law, values, limits, things like that. That's
18 about it.

19 Q. What specifically did Dr. Foreman tell
20 you about the original samples and their results?

21 A. Well, I wasn't attempting to interpolate
22 the last column of figures, figures like 811, 710,
23 942; and he said make it easier for me going back
24 to this column and that's 75, 85, 95 percent lead

CG 542

1 site, right?

2 A. No.

3 Q. Let me ask you a different question.

4 Did you see debris on the property
5 sometime after IEPA cleaned up the property?

6 A. Oh, at some point in time, yes.

7 Q. Just so the record is clear -- I don't
8 want this to be a confused point.

9 When IEPA cleaned up the Dutch Boy
10 property, the property was free of debris and was
11 clean, correct?

12 A. Yes.

13 Q. Sometime after IEPA completed its
14 comprehensive cleanup of the property, further
15 dumping occurred by someone, correct?

16 A. Yes.

17 Q. When IEPA completed its cleanup of the
18 site and the site was free of any debris, was the
19 Department of Health of the opinion that the site
20 no longer posed a threat?

21 A. I can't speak for the Department of
22 Health. All I can do is speak for myself.

23 When I saw the asbestos removed and the
24 lead-bearing material removed from the property,

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1 my concern for the immediate health of the people
2 was greatly reduced even though I knew there were
3 underground storage tanks yet to be dealt with.
4 So my involvement became a lot less.

5 Q. Upon observing IEPA's cleanup results,
6 was there anything that stuck out in your mind as
7 posing a threat to the public?

8 A. Yes and no. The site physically itself,
9 no. The end of the property line on -- next to
10 the site, yes.

11 Q. So you concluded after IEPA's cleanup
12 that the site itself no longer posed a risk to the
13 public, correct?

14 A. An immediate and imminent risk, yes.

15 Q. Well, was there anything about the
16 property after IEPA's cleanup that posed any risk?

17 A. Well, as I say I began to back off once
18 the immediate response was done, and the tank
19 cleaning I never really had a firm handle on where
20 it -- I knew it was going on but I didn't have a
21 day-to-day or every-other-day exposure to where
22 that was at; and like I said I don't remember the
23 end so I don't remember saying hey, everything's
24 gone.

002544

1 Q. Well, you observed that IEPA cleaned up
2 the surface of the property, right?

3 A. Yes.

4 Q. And you understood that IEPA was going to
5 address whatever materials were in the tanks,
6 right?

7 A. That kept going up and down and back and
8 forth.

9 Q. Assuming that IEPA did in fact address
10 the materials in the tanks and we know that they
11 cleaned up the surface because you saw that, was
12 there anything else about the property that stuck
13 out in your mind as posing a threat of any sort at
14 that property?

15 A. Well, the building with holes in the
16 floor, open manhole covers. Normal kind of things
17 that I would say, yeah, that's a health hazard.
18 But I don't need to stand out there with red
19 flags.

20 Q. Certainly after IEPA completed its work
21 of addressing debris on the property and
22 addressing whatever materials were in the tanks,
23 there was no environmental threat as far as you
24 were concerned, right?

007545

1 A. That I knew of, no.

2 Q. You said earlier that you visited -- you
3 have visited the property a couple times a year
4 since IEPA completed its actions there; is that
5 right?

6 A. Yes.

7 Q. Do you recall being at the property in
8 the summer of 1991?

9 A. Yeah.

10 Q. Can you describe the condition of the
11 property in --

12 A. No, it was not -- I didn't do a walk-
13 through. I drove by with David Coster and said
14 that's Dutch Boy, that used to look like this and
15 that and that is where it's at, and next door is
16 International Harvester so you learn where that
17 is, and take a look at the condition that's in;
18 and we were going right by it going somewhere else
19 so I took five minutes to show it to him and
20 explain it to him.

21 Q. Did you have an opportunity to generally
22 view the condition of the property?

23 A. We didn't get out of the car.

24 Q. What did you see?

002546

1 A. Not -- the building that's still
2 standing, a basically clean slab where the wall
3 had been. I wasn't back behind the building, and
4 I noticed that the city had put up what I guess we
5 call anti-fly dumping bars, railroad ties.

6 Q. Did the site appear to be a nuisance to
7 you on that visit in the summer of 1991?

8 A. To the extent that it was at the end of
9 the cleanup, yes, but further and beyond that, no.

10 Q. Let me ask you this question. I may be
11 confused on your testimony.

12 Did you testify that after IEPA cleaned
13 up the property it was still a nuisance?

14 A. Well, I said that there were still health
15 hazards that existed. I mean a property like that
16 unsecured would be attractive to children. If the
17 children go up in the building and are walking
18 along and fall through a 6-foot hole in the center
19 of the floor, that's a health hazard. But it's
20 not a red flag that we got a toxic spill chemical.

21 Q. Did IEPA erect a fence at that property?

22 A. Not that I recall. They used the
23 existing fence and the wall. We had secured
24 access from 120th with the fence that was there,

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1 but when that wall came down -- I'm a little
2 fuzzy. They may or may not have put up something
3 in the meantime. I don't know.

4 Q. So at the end of IEPA's cleanup you
5 didn't perceive any environmental threat at the
6 property but you thought the buildings -- the
7 semi-demolished building on the property might
8 pose some risk to someone?

9 A. Well, the physical structure itself and
10 the slabs that were left are attractive play-
11 grounds.

12 Q. If there was a fence at the property I
13 assume that would not have been a concern of
14 yours, right?

15 A. Right, if the place was secure, truly
16 tightly secure, it would not have been an
17 immediate concern.

18 Q. I assume if there was an adequate fence
19 there wouldn't be any concern, right?

20 A. Well, the problem I find with fences is
21 they tend not to be maintained very well. There's
22 never firm maintenance that this property is going
23 to stay intact or stay secure whether it be a
24 building or an attractive nuisance that's fenced.

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1 Q. If a fence was put up on the property and
2 was properly maintained, then the fact that
3 there's a semi-demolished building on the property
4 would not pose a threat, right?

5 MS. MARTIN: I'm going to make the objection
6 that that's calling for speculation. There's a
7 lot of things that could happen. You're asking
8 him what if. My objection stands and we could
9 work this out at some later time if we need to.

10 But if you feel comfortable answering the
11 question, go ahead.

12 THE WITNESS: No, it would just be an opinion.
13 BY MR. OSLAN:

14 Q. I'm asking for your opinion. If there is
15 a fence on this property and nobody can get onto
16 the property and the fence is maintained, the fact
17 that there's a building in a semi-demolished state
18 is not a problem, right?

19 A. I'm going to take the advice of my
20 counsel and not answer.

21 MR. OSLAN: I don't think she instructed you
22 not to --

23 MS. MARTIN: No, I just want to make for the
24 record an objection that it's calling for

1 speculation and you can't do that. You cannot ask
2 a speculative question or a question that would
3 call for an answer that's speculative.

4 If you know then you can answer. If you
5 have an opinion go ahead and answer. If you don't
6 know all the variables or if there are a jillion
7 variables and you couldn't adequately answer his
8 question, then that's what you tell him.

9 THE WITNESS: If a secure, high, well
10 maintained fence was there, the health and safety
11 perception I have of that being a danger would be
12 relieved.

13 BY MR. OSLAN:

14 Q. You mentioned earlier that you were aware
15 of the city going out and cleaning up this
16 property from time to time after -- since IEPA's
17 cleanup in 1987, right?

18 A. I have no specific information but they
19 certainly must have.

20 Q. Why do you believe that?

21 A. To warrant the installation of these
22 railroad ties to limit access to a large dump
23 track actually rolling up on site and dumping a
24 load. That's not an uncommon practice. You'll

002550

1 see a lot of it on various lots around the city.

2 Q. And the idea is to prohibit people from
3 putting trucks on the property or taking trucks on
4 the property and dumping debris on the property,
5 right?

6 A. Yes.

7 Q. And that's the fly dumping that you
8 referred to earlier?

9 A. Large-volume fly dumping, yes.

10 Q. Large-scale fly dumping?

11 A. Right. You're not going to keep off a
12 guy with a small truck from throwing it off the
13 edge, but you're going to keep out the guy with
14 the five-ton dump truck from dumping it.

15 Q. What involvement have you had with this
16 property since IEPA's cleanup in 1987?

17 A. Very, very minimum until the occurrence
18 of the lawsuit. Just most of the pass-bys were
19 curiosity to see what state it's in.

20 (Whereupon, Deposition
21 Exhibit No. 3, Witness
22 Cieslik, was marked
23 for identification.)

24 MR. OSLAN: Mr. Cieslik, you've been handed a

000551

1 document that's been marked Cieslik Exhibit 3.
2 Would you review that document and identify it for
3 the record, please.

4 BY MR. OSLAN:

5 Q. Is this a memo you wrote on or about
6 November 24, 1986?

7 A. It appears to be. I don't specifically
8 recall it, but, yes.

9 Q. It's addressed to Mark Limanni --

10 A. Limanni.

11 Q. -- of the corporation counsel's office
12 and it relates to the Dutch Boy property, right?

13 A. Right.

14 Q. At least in part?

15 A. Right.

16 Q. The first sentence says, "Lead sampling
17 at the Dutch Boy property line indicates 2300 ppm
18 lead. This would not pose a problem."

19 Does that statement relate to the
20 sampling you testified about earlier that you
21 performed at the site?

22 A. This was a second set of samples.

23 Q. Do you know whether this was before or
24 after IEPA completed its cleanup?

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1 A. This was probably while it was going on
2 while the contractor was on site. November 26?
3 It was probably as we shut down at the end of the
4 summer of '86 work, sort of a rough assessment of
5 the site.

6 Q. I assume you wrote this document; is that
7 right?

8 A. The memo, I must have. I don't see my
9 signature on it but I must have. If it was in my
10 file, certainly I wrote it and sent it to him.
11 Either he asked for it or -- I don't know.

12 Q. And you wrote that as part of your duties
13 as a Department of Health employee; is that right?

14 A. Yes.

15 Q. At the time you wrote this document you
16 had knowledge of the facts contained in the
17 document, right?

18 A. Well, I think the second paragraph is --

19 MS. MARTIN: Wait, wait. The question asks
20 for a yes or no response.

21 MR. OSLAN: Let me ask it again.

22 BY MR. OSLAN:

23 Q. At the time you wrote this memo you had
24 knowledge of the facts and information contained

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VICTORIA COURT REPORTING SERVICES, INC.

1 in the memo, right?

2 A. Yes.

3 Q. And you concluded on November 24, 1986,
4 that samples you had taken around the property
5 line of the Dutch Boy site did not pose a problem,
6 right?

7 A. Yes.

8 Q. When was the last time you were by the
9 site?

10 A. Tuesday.

11 Q. What is the condition of the property --
12 what was the condition of the property as of
13 Tuesday?

14 A. Essentially the same as I remember it at
15 the end of the cleanup with a little fly dumping
16 on it.

17 Q. Did you see a fence?

18 A. Just the city's. At this dumping fence,
19 if you could call it a fence, it's widely spaced
20 railroad ties with a wire running through it.

21 Q. And that's a fence that the city has put
22 up?

23 A. It's on the city's side of the sidewalk.

24 Q. Also is there some fencing on the actual

001554

1 property itself?

2 A. None that I observed.

3 Q. You said you observed some fly dumping?

4 A. There was some refuse basically to the
5 south of the structure that's still standing and
6 basically where the original stuff was that we
7 removed in 1986.

8 Q. I assume that the debris you saw on the
9 property Tuesday was not on the property when IEPA
10 completed its cleanup; is that correct?

11 A. No, it was not.

12 Q. Did you happen to notice what types of
13 debris that was?

14 A. Broken toys, an old tire, some garbage,
15 old clothing, debris.

16 Q. Was there a lot of debris there?

17 A. Not a horrendous amount but debris.

18 Q. Did you notice anything about the
19 property Tuesday that would lead you to believe
20 that it was a threat?

21 A. Yeah.

22 Q. What was that?

23 A. The holes are still in the -- the hole in
24 the structure is still accessible to kids,

000555

1 children. There was a dog on the property and I'm
2 sort of guessing but I think somebody's living
3 there.

4 Q. You believe somebody's living on the
5 property?

6 A. Yes. I haven't had a chance to follow
7 that on through.

8 Q. Are you aware of any efforts by the city
9 to determine whether there is anyone living on the
10 property?

11 A. No, it's something that needs to be
12 approached carefully. Probably I'll have the
13 Department of Human Services go over with the
14 police. I don't want to attempt to approach what
15 may be a habited structure.

16 Q. Will you agree that it's still the case
17 that since IEPA's cleanup there's no environmental
18 threat of the property as far as you know?

19 A. No, I wouldn't.

20 Q. There's something that's changed since
21 IEPA's cleanup?

22 A. Yes.

23 Q. What is that?

24 A. My review of the Toxicon report.

007556

1 Q. There is something in the Toxicon report
2 that --

3 A. Well, basically it's dated August of '87
4 I believe and it points out to the EPA that there
5 is still asbestos contamination on the property,
6 and at least three sites contaminated with lead
7 and two of the chlorine showed volatile organic
8 chemicals at a three- to five-foot level in excess
9 of 100 parts per mil.

10 Q. Have you or has anyone you know taken any
11 efforts to confirm the results of that sampling?

12 A. No, I just learned of it.

13 Q. Have you had any discussions with anyone
14 to determine whether the environmental specialists
15 working for the city or the state have reviewed
16 those sampling results?

17 A. I think I've asked corporation counsel.

18 Q. To your knowledge has anybody from the
19 city prior to yourself reviewed those results and
20 tried to assess them?

21 A. I understand that that is the function --
22 it was explained to me in one of those
23 conversations that that would be the involvement
24 of the Department of the Environment.

1 Q. But other than the report you don't have
2 any knowledge of any materials on the site,
3 correct --

4 A. No, I did no further sampling.

5 MR. OSLAN: Let's take a few-minute break.

6 (Short recess.)

7 BY MR. OSLAN:

8 Q. Mr. Cieslik, you testified that you had
9 reviewed the Toxicon report and that some of the
10 results of samples taken by Toxicon showed the
11 presence of certain substances that you believe
12 cause a threat, right?

13 A. More accurately I read the letter that
14 Toxicon wrote to EPA on the top of that report
15 that told the EPA these problems existed.

16 Q. Do you know what the date of that report
17 was?

18 A. I'm thinking August '87.

19 Q. Do you know whether that was before or
20 after final cleanup had been done by IEPA?

21 A. Well, I'm thinking it's after but I'm not
22 positive.

23 Q. Have you had an opportunity to identify
24 the specific locations Toxicon sampled?

002558

1 A. I just briefly glanced at this report.

2 Q. So you don't know where the samples were
3 taken, right?

4 A. I just have a rough picture. They were
5 on site -- there were some on site, some off site.

6 Q. For the on-site samples do you know where
7 specifically the samples were taken?

8 A. I don't have this knowledge in my head,
9 no.

10 Q. Do you know whether -- strike that.
11 Do you know what the volume of substances
12 on the site are that Toxicon found?

13 A. Well, I just have a flash in my head of
14 seeing figures of 120 cubic yards of this and
15 that, but I don't know exactly.

16 Q. Do you know whether people exposed to
17 those materials would be harmed in any way?

18 A. Well, I know that they specifically
19 talked about three soil lead samples and lead,
20 yes. If a child were to sit and ingest the lead
21 in the soil, he could get lead poisoning.

22 Q. What lead levels did you see?

23 A. They said they were in excess of the EP
24 tox limit of 5 parts per million which is

002559

1 basically irrelevant to me from a health aspect.
2 But to reach that kind of an EP tox level, the
3 actual physical lead -- that's what we're
4 concerned with -- would have to be quite high.

5 Q. Do you know whether all the samples that
6 were taken had EP tox levels in excess of 5?

7 A. No, all of them did not. I know that
8 because there were more than the three they were
9 talking about I saw from a brief view.

10 Q. If there were a fence on the property
11 that was maintained, would you agree that that
12 area, whatever it is, would not pose a problem?

13 A. Not necessarily. I would have to know --
14 I would have to have some method of determining
15 that that lead could not become airborne.

16 Q. Do you have any reason to believe it can
17 become airborne?

18 A. I'm assuming it's in soil and in dry
19 conditions soil can blow. If it's powdered lead,
20 yes, it can blow.

21 Q. But as you sit here today you don't know
22 whether it's airborne or not?

23 A. No, I don't.

24 Q. Do you have any knowledge as to the

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1 source of the materials found there?

2 A. No.

3 Q. Do you have any reason to believe that
4 lead on the property is in excess of 2300 parts
5 per mil?

6 A. Yes.

7 Q. Do you know that it is?

8 A. No.

9 MR. OSLAN: Let's mark this as No. 4.

10 (Whereupon, Deposition
11 Exhibit No. 4, Witness
12 Cieslik was marked
13 for identification.)

14 BY MR. OSLAN:

15 Q. Mr. Cieslik, you've been handed what's
16 been marked Cieslik Exhibit No. 4?

17 A. Yes, sir.

18 Q. It's a memorandum from yourself to Arlene
19 Martin. Did you write that document?

20 A. Yes, I caused it to be written.

21 Q. Are those your initials?

22 A. No, applied by Susan Jacobs for me. I
23 probably wrote it over the phone from the field.

24 Q. And this document was written as part of

007561

1 your duties as a Department of Health employee; is
2 that correct?

3 A. I had discussed the possibility of
4 originating such a document with Arlene.

5 Q. It shows that the Department of Health
6 has spent about \$19,240 at the Dutch Boy site; is
7 that right?

8 A. There were three different documents.
9 There's some more amendments to this. I'm not
10 sure if this is the latest or not.

11 MR. OSLAN: Arlene, do you know if this is the
12 latest? This is the only one we have.

13 MS. MARTIN: I really don't know. I don't
14 recall.

15 THE WITNESS: I'm thinking I got -- I totally
16 misunderstood the environmental lead program and
17 the medical lead program summary of what they
18 spent and neglected to add in the actual
19 laboratory cost for the analysis of the samples.

20 There's like three different dollar
21 amount offerings because everybody kept changing
22 their mind or raising their hand or you forgot
23 this or you forgot that. I'm thinking there's a
24 large lab bill that isn't on here for actually

007562

1 running the blood.

2 BY MR. OSLAN:

3 Q. And you have written that memo already?

4 A. Not physically. Susan probably wrote
5 it. I told her as the information comes in just
6 keep everybody updated so we can come up with some
7 kind of a total figure, and I'm not sure what it
8 was but my guess is it would have been more like
9 in the 30s.

10 MR. OSLAN: Arlene --

11 MR. STONE: What was more like in the 30s?

12 THE WITNESS: The total dollar figure that the
13 department spent on the project.

14 MR. STONE: So instead of 19,240 you think
15 it's closer to 30,000? Is that what you're
16 saying?

17 THE WITNESS: I think so.

18 MR. STONE: It's not 30,000 in addition to the
19 19 --

20 THE WITNESS: No, I'm thinking that's a total
21 but I'm not positive. I know I've got at least
22 three different pieces of paper on this subject
23 and I don't know if they're after the date I gave
24 my files to Arlene.

007563

1 MR. OSLAN: Arlene, will you get us the most
2 recent of this document?

3 MS. MARTIN: Yes, I'll look into this.

4 MR. TUCKMAN: I don't remember seeing any
5 documents regarding health department costs.

6 MR. OSLAN: I just have a few more questions.

7 BY MR. OSLAN:

8 Q. You don't have any information regarding
9 blood lead studies done at this lab prior to 1986?

10 A. No, we have no baseline information.

11 Q. I assume that you have no information
12 relating to blood lead studies done since IEPA's
13 cleanup in 1987; is that right?

14 A. I don't know that we've had any requests
15 from anyone to do any additional work, no.

16 Q. You have no personal knowledge of the
17 levels of hazardous substances, if any, remaining
18 on the property after IEPA's cleanup; is that
19 correct?

20 A. Correct.

21 MR. OSLAN: I have no further questions at
22 this time.

23 MR. TUCKMAN: Mr. Cieslik, I'm going to ask
24 you some questions. I represent ARTRA in this

002564

1 matter. You testified earlier as to knowledge you
2 had or did not have regarding the activities of NL
3 and ARTRA. I have a few more questions in that
4 regard.

5 EXAMINATION

6 BY MR. TUCKMAN:

7 Q. Am I correct that you have no knowledge
8 as to the types of activities ARTRA conducted at
9 the site prior to 1980?

10 A. Nothing more than I assume it was a
11 manufacturer of Dutch Boy paint because we all
12 call it Dutch Boy paint.

13 Q. Am I correct you don't know whether or
14 not ARTRA was engaged in the manufacturing and
15 sale of lead-based paint?

16 A. You're correct.

17 Q. Prior to 1986 did you ever see --
18 physically see the plant?

19 A. No.

20 Q. You never set foot on it?

21 A. No.

22 Q. So any question relating to prior to 1986
23 you would have no knowledge whatsoever?

24 A. None whatsoever.

002565

1 Q. There were some interrogatories answered
2 in this cause by the City of Chicago and they
3 listed you in response to Interrogatory No. 6
4 which states: "Identify by name, address, and
5 employment position each person known to plaintiff
6 who claims to have actual firsthand knowledge of
7 any hazardous substances and chemicals stored,
8 abandoned, discarded, and disposed of by either
9 defendant at the subject site without adequate
10 containers, security, or safeguards," and they
11 identified you in response.

12 Am I correct -- and we're talking about
13 defendants which are NL and ARTRA only.

14 Am I correct you have no firsthand
15 knowledge of any hazardous substance or chemicals
16 which were abandoned, discarded, or disposed of by
17 either one of these parties?

18 A. Yes, you're correct.

19 Q. You found what you claim to be lead
20 powder on the site, correct?

21 A. Correct.

22 Q. And is your testimony that it was there
23 but you do not know the actual party that placed
24 it on the site?

CC-566

1 A. I did not -- I have no knowledge as to
2 who specifically put that material where it was.

3 And I would more accurately describe it
4 as lead- based paint pigment rather than a lead
5 powder. This was a colored material, a pigmented
6 material, whereas I would think of a lead dust as
7 a grayish matter.

8 Q. Am I further correct that you don't know
9 whether that powder that you saw was dumped or
10 came out of any kind of piping or containment
11 drums?

12 A. I would say that from its position and
13 where I observed most of the powder it was from
14 the bag house and its duct work. Most of the
15 powder was actually in the ducts of the bag house
16 and on the ground where the ducts had been
17 separated.

18 Q. In other words if there was a breach in
19 the duct --

20 A. They were physically ripping the ducts
21 apart.

22 Q. And whatever was inside fell to the
23 ground?

24 A. Right, and there was some on the

002567

1 outside. But as I recall I thought it was a
2 result of the bag house dismantling. There were
3 places in the structure still standing that
4 actually contained pigments in the equipment --

5 Q. Of actual equipment --

6 A. -- of a very similar type of material.

7 Q. But still using the term the powder you
8 saw, that was confined to certain areas which
9 indicated to you it was either from equipment or
10 from the duct work?

11 A. Yes.

12 Q. And your observations did not -- in your
13 observations you did not conclude that this was
14 powder which is randomly dumped by a third party
15 or any person?

16 A. Well, no, it wouldn't appear -- I
17 wouldn't walk along and find a pile of it here if
18 that's what you're asking me.

19 Q. Nothing you found indicates that someone
20 dumped it out of a drum or a container onto the
21 ground other than where you saw it? Is that --

22 MS. MARTIN: I will object. The question is
23 ambiguous.

24

007568

1 BY MR. TUCKMAN:

2 Q. I'll be more clear. Is there anything
3 that you found which leads you to believe that any
4 white powder was dumped out of any kind of
5 container or canister?

6 A. Other than probably into the equipment
7 where you saw it.

8 Q. Other than the equipment or where you saw
9 the holes in the deduct work --

10 A. Not that I recall, no.

11 Q. You said you saw people actually sitting
12 out there with torches trying to dismantle
13 equipment?

14 A. Yes.

15 Q. Did you ever talk to anybody from ARTRA
16 or NL as to the condition of the property when
17 they conveyed title?

18 A. At this point in time I had no idea of
19 who even the current owner was much less any
20 involvement of anyone else.

21 Q. Did you ever do an independent inquiry as
22 to the condition of the property when ARTRA or NL
23 conveyed title?

24 A. No.

001169

1 Q. So as we sit here today you do not have
2 firsthand knowledge whether the property was, as I
3 will call it, intact?

4 A. No.

5 Q. But you've ascertained that sometime
6 after the conveyance from ARTRA to Goodwill
7 someone authorized the demolition of this site?

8 A. Right.

9 Q. And again you have no prior knowledge as
10 to whether the buildings were still intact, the
11 walls were still up, roofs were still intact?

12 A. No.

13 Q. Before --

14 A. Before May of 1986, no.

15 Q. You said also that you contacted Streets
16 and Sanitation to go out there and do a cleanup;
17 is that a correct statement?

18 A. Yes, a cleanup of rubbish.

19 Q. Using the date of May 15, 1986, when you
20 were out there May 15, 1986, and putting aside the
21 components of the building which you found or the
22 equipment -- I'm just talking about rubbish -- was
23 there rubbish on the site?

24 A. Yes.

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1 Q. Rubbish in a sense of things you
2 described like tires and garbage and clothing?

3 A. Right, but rather contained in one area
4 of the site. It wasn't scattered site-wide.

5 Q. So whoever dumped it was courteous enough
6 to --

7 A. Contain it in the southeast corner.

8 Q. You don't have any knowledge then that
9 ARTRA or NL fly-dumped that particular garbage?

10 A. No.

11 Q. And the equipment that you saw in the
12 states of disrepair or disassembly or the duct
13 work, that's not true fly dumping, is it?

14 A. I wouldn't consider that fly dumping, no.

15 Q. Now when you contacted Streets and
16 Sanitation -- if you could be a little more
17 specific as to a date?

18 A. I'm guessing most of the contacts were
19 made in June because I had to get sewer covers put
20 on some sewers, I had to close streets, I had to
21 get water from the fire hydrant, I had police
22 watches on the property. I was calling a lot of
23 different agencies.

24 Q. What I'm not clear on is whether Streets

CC-871

1 and Sanitation cleaned the site surface for debris
2 prior to EPA, during EPA, or after EPA?

3 A. I'm thinking during startup of. I had a
4 ward superintendent come over with a front loader
5 and dump truck and got the stuff up and got rid of
6 it so we could get into that area of the property.

7 Q. Do you know whether Streets and
8 Sanitation limited their cleanup to the, quote,
9 unquote, fly-dumping debris?

10 A. Absolutely. I specifically remember
11 having EPA standing there with me watching what we
12 took so that we didn't get anything we shouldn't
13 get.

14 Q. When Streets and Sanitation completed
15 their aspect of the cleanup, the components of the
16 building or the equipment was still laying on the
17 ground wherever?

18 A. Yes.

19 Q. They didn't touch that?

20 A. No, no, no, no.

21 Q. So anything Streets and Sanitation did at
22 any time was only for garbage-related fly dumping?

23 A. Right.

24 Q. At some point in time did Streets and

1 Sanitation go out again after the EPA completed
2 its cleanup?

3 A. I don't know for a fact that that's true
4 or not true.

5 Q. You --

6 A. I guess so because of the erection of
7 this anti-dumping fence, and what generally leads
8 to that is being forced to many times clean up the
9 property.

10 Q. I might have asked you this before, but
11 the fly dumping itself you have no knowledge as to
12 the -- strike that.

13 To the best of your knowledge neither
14 ARTRA nor NL caused any fly dumping?

15 A. To the best of my knowledge.

16 MS. MARTIN: What was that question? I'm
17 sorry, would you read back Mr. Tuckman's last
18 question.

19 (Record read.)

20 BY MR. TUCKMAN:

21 Q. When you first went out there in May of
22 '86 did you see a fence or the remnants of any
23 fence around the perimeter of the property?

24 A. Just the gate I described on 120th. The

002573

1 south and east side I know was not fenced because
2 that's where the fly dumping was and I don't
3 believe that railroad side was fenced. There may
4 have been some remnants of fence along the west
5 property line but I'm not that clear on it.

6 Q. Did you do any kind of an investigation
7 or maybe any inquiry to determine whether or not
8 ARTRA had left the property intact with a fence
9 when they transferred title?

10 A. I made no such inquiry.

11 Q. So you don't know whether ARTRA fenced
12 the property off?

13 A. I don't know.

14 Q. You referred to this report dated I think
15 you said November '87 from Toxicon?

16 A. I believe it was August but I may be
17 wrong.

18 Q. I may be wrong. You might have said
19 August.

20 In any event, this was a report which was
21 in the files of the City of Chicago, correct?

22 A. I received it from corporation counsel.
23 I never knew of its existence.

24 Q. Do you know whether or not IEPA had that

002574

1 report since its preparation?

2 A. I would assume so but I don't know.

3 Q. As far as the Health Department, am I
4 correct that since the date of the report until
5 the present time no further action has been
6 undertaken as a result of that report?

7 A. As far as I know there has been no
8 further action taken.

9 Q. Have you ascertained whether any other
10 department in the City of Chicago has done
11 anything since August of '87?

12 A. I just asked that one department, the
13 Department of the Environment, if they had done
14 anything and they said no, they had not.

15 Q. Did you make any inquiry to the IEPA as
16 to whether or not anything will be done as a
17 result of that report?

18 A. No, I did not.

19 Q. Do you know if anyone did?

20 A. No, I do not.

21 Q. Do you know whether or not the IEPA has
22 done anything additional in the way of
23 environmental cleanup as a result of that report?

24 A. I do not.

002375

1 MR. TUCKMAN: I have no further questions.

2 EXAMINATION

3 BY MR. STONE:

4 Q. I think way back in the beginning of the
5 deposition you said that you had visited the site
6 a hundred or 300 times?

7 A. I think I said about a hundred.

8 Q. And then later on we found out that your
9 main connection to the site was between May of '86
10 and Novemberish of '86; is that correct?

11 A. I would guess yes. But because of the
12 time frame presented in Exhibit 2, my time frame
13 is off a little bit and it's not as I recall.

14 Q. According to that testimony you would
15 have been out there almost every day.

16 A. I went out a lot. I can remember morning
17 after morning driving from the Northwest side to
18 120th and Peoria.

19 Q. And outside of the two times that you
20 testified I think, two or three, that you took the
21 samples, what were you doing out there?

22 A. Facilitating things.

23 Q. Like what?

24 A. Somebody'd steal a sewer cover; we'd get

002576

1 a sewer cover put on. Get the street shut down,
2 observing the cleanup, watching, just getting a
3 feel for what was going on.

4 Q. Did you have any specific -- what were
5 your specific duties in the cleanup process?

6 A. Other than an observer I don't think --
7 after the initial securing of the site was
8 accepted there wasn't a specific task and
9 function. Just a general observation of what was
10 going on on the site.

11 Q. When the Department of Health has a lead
12 paint scare -- and here you testified that they
13 sampled 300 people --

14 A. That's just a guess. I don't have that
15 figure clear in my mind.

16 Q. Okay. Well, let's say it's a lot --

17 A. A lot, yes.

18 Q. Did any of the samples show lead
19 contamination other than the original scavenger?

20 A. Yes, there were additional lead poisoning
21 victims identified as a result of the screenings.

22 Q. And do you know to what extent they were
23 poisoned?

24 A. That's more of a medical question than

002577

1 one I can answer. I know they were detected.

2 Q. What if anything is your procedure
3 relative to following up on lead poisoning victims
4 that you --

5 A. The medical ed section would have
6 initiated a case on it, done a followup. They
7 would have done an environmental investigation --

8 Q. When you say initiated a case --

9 A. A medical case -- and the patients
10 needing treatment, they would have sought and got
11 treatment either by our physicians or by being
12 referred to Cook County Hospital for treatment.

13 Q. Do you know of anybody or any cases where
14 that occurred?

15 A. I know there were lead poisoning cases as
16 a result of the screenings at the firehouse and
17 the school.

18 Q. And your lead people keep records of
19 those that they service in this regard?

20 A. Yes.

21 Q. And they would have those?

22 A. Right, there are -- I would -- I don't
23 know.

24 Q. But when you were asked to produce

002578

1 documents regarding this case, did you ask for the
2 medical department's documents or the lead paint
3 department's documents --

4 A. No --

5 MS. MARTIN: Wait, I have an objection and
6 it's a legal one and I'm confused here. When you
7 say did you produce, are you asking him, Roger
8 Cieslik, individually in his capacity as the code
9 enforcement person? Or are you saying Roger
10 Cieslik, you who's the Department of Health?
11 Because I want that clear.

12 He does not -- he is not here as an
13 expert and he does not represent the Department of
14 Health. The Department of Health employs many,
15 many people and he's already given us a few names
16 of people who were already involved. Dr. Foreman
17 was one of them.

18 He would not have documents that are in
19 any other division of the Department of Health. I
20 just want to make that clear.

21 BY MR. STONE:

22 Q. So when you or your counsel gave you the
23 request for documents, did you search through the
24 other departments of the Department of Health for

002279

1 cases or for files which may be germane to this
2 case?

3 A. No.

4 Q. So your document search was contained to
5 what area of the Department of Health?

6 A. The other areas of the department that I
7 would know of that would have specific documents
8 on this case would have been represented in my
9 case file already, i.e., the laboratory results,
10 i.e., a stack of medical lead results.

11 So, no, I didn't go too far beyond where
12 I was except in the discussions I previously
13 talked about in talking to other individuals in
14 the department to see if they had knowledge I
15 didn't have.

16 Q. When did you become aware that a wrecking
17 permit had been issued by the city on these
18 premises?

19 A. Probably on May 16 or 17th.

20 Q. Could you tell us how that happened or
21 how you became aware?

22 A. Well, I began a desperate search for
23 information on this property starting with corp
24 counsel, going to the Building Department, going

002580

1 to Consumer Services, going wherever I could go;
2 and I think I probably picked that up at the
3 Building Department while I picked up some tank
4 information, but I may be off by a week one way or
5 the other on that.

6 Q. When did you first become aware of the
7 fact that Lavon Tarr or M&T Enterprises had any
8 interest in this property?

9 A. Whenever corp counsel called me back and
10 told me there's a court case already existing and
11 these are the principals, which would have been
12 prior to -- I would guess prior to June 1.

13 Q. And did you have occasion to contact or
14 talk to Mr. Tarr?

15 A. Other than at court, no, not that I
16 recall.

17 Q. Do you recall ever corresponding with
18 Mr. Tarr?

19 A. No, I don't. I may have but I don't
20 recall.

21 Q. Did you during the period say May, June
22 know when Mr. Tarr acquired the property?

23 A. Well, at some point I -- probably in that
24 period I acquired a copy of the court case; and

002581

1 not that I remember specifically paying any
2 attention to it, that information is contained in
3 it.

4 Q. Do you have any knowledge of the
5 condition of the property prior when Mr. Tarr
6 acquired it -- at the time when Mr. Tarr acquired
7 it which is prior --

8 A. That would have been prior to --

9 Q. May 1986.

10 A. No, I have no knowledge.

11 Q. When you find a property where fly
12 dumping has occurred and -- is that normally the
13 Department of Health's -- is the main
14 responsibility for fly dumping in the Department
15 of Health?

16 A. No.

17 Q. Can you tell me about who polices fly
18 dumping for the city if you know?

19 A. The Department of Streets and Sanitation
20 did the last that I knew of.

21 Q. Do you know what the normal procedure is
22 if a property has -- if the city discovers that
23 property has fly dumping going on on it, what the
24 city does if you know?

002582

1 MS. MARTIN: If you know.

2 THE WITNESS: It would depend greatly on the
3 degree of fly dumping. If it was a small amount,
4 the city might clean it or get the landowner to
5 clean it. If it became a large nuisance, it would
6 result in a court case. If it became a horrendous
7 problem, I might get involved in it.

8 BY MR. STONE:

9 Q. I wasn't real clear on what the trigger
10 was that gets you involved in fly dumping cases,
11 so maybe you could tell me what happens or what
12 kinds of facts occur that brings the Department of
13 Health into a fly dumping case.

14 A. It could be a specific request from the
15 Department of Buildings or the Department of
16 Streets and Sanitation or sometimes a request from
17 an alderman: Even though it's not your area, will
18 you please take a look at it for me. Occasionally
19 a request from enough citizens.

20 The first call you don't pay too much
21 attention to. The second one you would think
22 about, but you would refer them on down the line.
23 But when it starts hitting six or ten, maybe it's
24 something the Department of Health needs to take a

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1 look at and it's just a judgment call in most
2 cases.

3 Q. You think -- unless I'm wrong, it's a
4 little unclear to me from your testimony when the
5 IEPA cleanup was over or when it was substantially
6 over.

7 A. I don't have a vivid recollection of the
8 end occurring. I see myself fading away from the
9 process after the initial lead and asbestos was
10 addressed and having a much lesser involvement as
11 they went ahead and addressed the tanks.

12 MR. STONE: I'm wondering, Counsel, if you
13 might have him take a look at some of his
14 materials -- not deep, dark research -- to see if
15 he can find something that might refresh his
16 recollection on that particular issue.

17 MS. MARTIN: Do you have his materials?

18 MR. STONE: No.

19 MS. MARTIN: Well, he wasn't requested or
20 required to bring them --

21 MR. STONE: I'm not talking about right this
22 minute. Just generally later sometime.

23 MS. MARTIN: What is this request again?

24 MR. STONE: My request is for him to take a

007584

1 look at his materials to see if he can ascertain
2 an answer as to when he thinks --

3 MS. MARTIN: IEPA completed its cleanup?

4 MR. STONE: Right.

5 MS. MARTIN: Well, the IEPA documents would
6 have that information in them, wouldn't they? I
7 really think it's improper to ask Mr. Cieslik when
8 the Illinois Environmental Protection Agency
9 completed their cleanup.

10 MR. STONE: Okay.

11 BY MR. STONE:

12 Q. You testified that the IEPA power-washed
13 the existing buildings or the buildings that were
14 up at the time?

15 A. Yes, I recall seeing that.

16 Q. Do you recall whether that was towards
17 the beginning, the middle, or the end of their
18 process or if you know what month it was?

19 A. It was certainly toward the end of the
20 asbestos and lead cleanup portion of the clean-
21 up. It may very well have been toward the end of
22 the tank portion of the cleanup, because as the
23 asbestos and lead portion drew down we were
24 getting quite late in the year and it was getting

002585

1 real cold out.

2 MR. STONE: I have no further questions.

3 MR. OSLAN: I just have a couple more
4 questions.

5 FURTHER EXAMINATION

6 BY MR. OSLAN:

7 Q. Does the mere presence of, say, lead on a
8 property automatically make that property a public
9 nuisance?

10 A. I would say it more makes it a health
11 hazard than a public nuisance.

12 Q. Let me ask you a different question then.
13 Does the mere presence of lead make a
14 site a health hazard every time?

15 A. No.

16 Q. And is that also the case with a
17 substance like asbestos?

18 A. Yes.

19 Q. For example, if lead and asbestos is
20 contained in a building -- adequately contained in
21 a building, that site presumably would not be a
22 health hazard, correct?

23 A. Not necessarily. Depending on the
24 condition of the asbestos and the condition of the

007586

1 lead.

2 Q. Right. My assumption was that it was
3 adequately contained.

4 A. Yes.

5 Q. Then would you agree that that site would
6 not be a health hazard, right?

7 A. If it were inaccessible to anyone and
8 properly maintained, I would agree the mere
9 presence of asbestos and lead in a contained form
10 is not necessarily a health hazard.

11 Q. That is also the situation where you
12 might have lead and asbestos found on a property
13 but nobody is being exposed to levels above a
14 given health standard, right?

15 A. Right, but that given health standard is
16 a very low level compared to the official EPA EP
17 tox test, which is totally irrelevant in the eyes
18 of a health person. EP tox is merely a measure of
19 the leachability of that lead in basically neutral
20 water, the ability to leach into groundwater,
21 which is of no concern to us. It's of a concern
22 to the EPA.

23 The mere presence of lead or the
24 accessibility to inhalation or ingestion of that

002587

1 material is the problem confronting the Department
2 of Health whether it be in a paint chip or a dust
3 form.

4 Q. When the Department of Health looks at
5 the presence of, say, lead on a property to
6 determine whether it poses a health threat, it
7 also looks at exposure levels, correct?

8 A. Potential for exposure. Put it that way.

9 Q. And if there is not a sufficient
10 potential for exposure, the Department of Health
11 will conclude that it's not a hazard, right?

12 A. Maybe not an imminent hazard but I think
13 it would put in the back of its mind that a
14 potential hazard exists there if the lead is in
15 sufficient quantity were someone to have access to
16 it would be exposed.

17 Q. You have to have a sufficient quantity of
18 the substance and you also have to have a
19 sufficient potential for exposure, right?

20 A. Yes.

21 Q. And if you don't have a sufficient
22 quantity and a sufficient potential for exposure,
23 the department would typically conclude there
24 would not be a hazard, right?

002588

1 A. Again I have to say it would conclude it
2 was not an imminent hazard but it would be
3 concerned about the presence of lead. It's
4 getting ever more so.

5 Q. Let me give you kind of an extreme
6 example.

7 If I take a lead pencil and throw it onto
8 a property, that's a very small amount of lead;
9 and the quantity of lead is very small and the
10 ability or potential for exposure is very small.

11 I assume the Department of Health would
12 find that is not a threat or a potential threat,
13 right?

14 A. Maybe what I should say here is that I
15 would -- and I really shouldn't be speaking for
16 the Department of Health in this area because we
17 have very specific people in charge of those
18 areas.

19 MS. MARTIN: Also the lead in the lead pencil
20 is not the lead -- it's a carbon something or
21 another. It's not -- I guess what you're looking
22 at is quantity, right?

23 MR. OSLAN: No, I'm going back when they used
24 to have lead in pencils.

002589

1 BY MR. OSLAN:

2 Q. Your answer was that you would still
3 consider that a threat?

4 A. No, I might not personally, but I said
5 that I don't think I should necessarily be
6 speaking for policy of the medical lead program
7 people. That should be something they should be
8 speaking for.

9 Q. So there are other people at the
10 department with more expertise in that question --

11 A. Absolutely.

12 Q. And you're not in a position really to
13 speak to that question; is that right?

14 A. No -- that's correct.

15 MR. OSLAN: I have no further questions.

16 MS. MARTIN: I have just a couple to clear up.

17 Was your interrogatory you referred to
18 No. 6?

19 MR. TUCKMAN: I believe that's what it was.

20 EXAMINATION

21 BY MS. MARTIN:

22 Q. Mr. Cieslik, looking at Deposition
23 Exhibit No. 2 that was referred to by Mr. Oslan,
24 what was the purpose behind the memo -- generating

002550

1 this memo?

2 A. Basically to bring the existence of the
3 International Harvester site to the attention of
4 the corporation counsel and to relay some hearsay
5 information we had picked up about what existed on
6 the site --

7 Q. On which site?

8 A. On International Harvester.

9 Q. So we're not talking about -- the 2300
10 parts per million lead that's in that first
11 sentence there does not refer to the sampling on
12 the Dutch Boy site but, rather, at the property
13 line of the Dutch Boy and the International
14 Harvester --

15 A. On the International Harvester side.

16 Q. Do you know if NL had a problem with fly
17 dumping at the time that it maintained its paint
18 manufacturing business?

19 A. No.

20 Q. Do you know if ARTRA had a problem with
21 fly dumping at the time that it maintained its
22 paint manufacturing business?

23 A. No.

24 MS. MARTIN: Mr. Tuckman, this is why I'm a

002591

1 little bit confused here. My notes indicate that
2 the question you asked referring to the
3 interrogatory doesn't merit -- and maybe I have
4 the wrong interrogatory. Are you referring to
5 your interrogatories to --

6 MR. TUCKMAN: Yes.

7 MS. MARTIN: May I see that?

8 (Discussion off the record.)

9 BY MS. MARTIN:

10 Q. Going back to the interrogatory that
11 Mr. Tuckman referred to -- and I'm going to show
12 this to you. It's No. 6.

13 Your name is given as a person who would
14 have actual firsthand knowledge of any hazardous
15 substance, chemicals -- and chemicals that are
16 stored, abandoned, discarded, and disposed of by
17 NL or ARTRA without adequate containers, security,
18 or other safeguards --

19 A. I'm sorry, I don't read it to say by NL
20 or by ARTRA.

21 Q. No, it says by either defendants, NL or
22 ARTRA.

23 In your experience in your job with the
24 City of Chicago working for the Department of

002532

VICTORIA COURT REPORTING SERVICES, INC.

1 Health are you familiar with the chemicals that
2 are used by paint manufacturers or not all of them
3 but some of them?

4 A. Some of them.

5 Q. Are you familiar with how some of these
6 chemicals are stored?

7 A. Yes.

8 Q. How are these chemicals stored?

9 A. Some are stored in drums, metal or
10 plastic. Some are stored in above-ground tanks,
11 some in underground tanks.

12 Q. From your visits to the Dutch Boy site
13 you've already testified that you identified or
14 the IEPA also identified various storage tanks; is
15 that correct?

16 A. Yes.

17 Q. What is your knowledge as to the material
18 that these tanks are made out of?

19 A. Steel. The ones in the ground are made
20 of steel I believe.

21 Q. Do you know what becomes of the condition
22 of steel drums such as the ones that are used in
23 the -- used at the Dutch Boy site and are
24 underneath the ground over a period of time?

007593

1 MR. TUCKMAN: Objection. He's already
2 testified as to what his knowledge is and from his
3 employment. He's testified he's not an expert on
4 environmental issues. I assume he's also not an
5 expert on --

6 MR. OSLAN: Tank construction.

7 MR. STONE: Metallurgy.

8 MR. TUCKMAN: -- metallurgy. If you want to
9 qualify him as an expert, we should reconduct this
10 deposition because we've been limited. This is
11 exceeding what we consider the direct examination
12 and it's irrelevant. He's giving an opinion --

13 MS. MARTIN: Based on his experience as a
14 health code enforcer for the Department of Health
15 for the City of Chicago.

16 MR. OSLAN: Let me add I have an objection.
17 There's no foundation. Unless you ask the witness
18 about some problems with tanks that he has
19 personal knowledge of, there's no foundation.

20 MS. MARTIN: Well, I think what I'm trying to
21 do is --

22 MR. OSLAN: We know what you're trying to do.

23 MS. MARTIN: -- get to a foundation right
24 here.

002594

1 BY MS. MARTIN:

2 Q. All right, Mr. Cieslik, have you visited
3 sites that -- as a health code enforcer have you
4 had the experience and opportunity to go onto a
5 site that contained steel tanks similar to the
6 ones that are presently on the Dutch Boy site and
7 found their condition to be such that the contents
8 therein was leaking?

9 MR. TUCKMAN: Objection --

10 MR. OSLAN: Objection. Lack of foundation and
11 objection to the form.

12 MR. TUCKMAN: There's no relevance at all what
13 he's found on other inspections. It's what he's
14 found on this inspection and his knowledge is
15 limited to this site.

16 MS. MARTIN: Your first objection is there is
17 no foundation and I'm making the foundation here.
18 I'm establishing a foundation and then I'm going
19 to get back to Dutch Boy.

20 MR. OSLAN: Why don't you just ask him about
21 his knowledge of these tanks and then we could
22 probably cut it short.

23 MR. STONE: You're objecting to her asking
24 about his knowledge of these tanks.

007595

1 MR. TUCKMAN: We are because he's not
2 qualified to give an opinion.

3 MR. STONE: You can't object on one hand and
4 then tell her --

5 MR. TUCKMAN: Not every site in the city of
6 Chicago of leaky tanks. It's on this one and what
7 his knowledge is.

8 MR. STONE: I agree. I'm on your side.

9 MR. TUCKMAN: Thank you.

10 MR. OSLAN: All right. Let's let her go on.

11 MS. MARTIN: I'm going to go back to the
12 original question, Mr. Cieslik.

13 BY MS. MARTIN:

14 Q. The original question is in your position
15 as a health code enforcer did you have an
16 opportunity or did you experience going onto a
17 site that contained steel drums or tanks similar
18 to the ones that you found on the Dutch Boy site?

19 MR. OSLAN: Objection. Lack of foundation.

20 MS. MARTIN: What? I'm asking him if he's
21 ever had the opportunity --

22 MR. OSLAN: You can ask him.

23 MR. TUCKMAN: Same relevance objection as I
24 made before.

002596

1 THE WITNESS: Yes.

2 BY MS. MARTIN:

3 Q. And have the tanks -- the steel tanks
4 that you --

5 MR. STONE: I didn't hear his answer.

6 THE WITNESS: Yes.

7 BY MS. MARTIN:

8 Q. Have the steel tanks that you observed
9 been in a condition that caused the contents to
10 leak out?

11 MR. OSLAN: Objection. Lack of foundation.

12 MR. TUCKMAN: Same objections as to relevance.

13 THE WITNESS: Yes.

14 BY MS. MARTIN:

15 Q. What were the conditions of those tanks
16 that caused the leaking?

17 MR. OSLAN: These are tanks on other
18 properties?

19 MS. MARTIN: Yes.

20 MR. TUCKMAN: Objection. Foundation.

21 THE WITNESS: Metal failure and the piping to
22 them leaking releasing gasoline or other toxic
23 chemicals.

24

002597

1 BY MS. MARTIN:

2 Q. Do you know the approximate age of these
3 tanks?

4 A. No, I don't.

5 MR. TUCKMAN: Which tanks?

6 MS. MARTIN: The tanks that I'm asking him
7 questions about.

8 MR. TUCKMAN: These fictitious tanks on other
9 properties?

10 MS. MARTIN: They are not fictitious tanks.
11 They are tanks he has observed.

12 BY MS. MARTIN:

13 Q. Do you have knowledge that you have
14 acquired during working for the City of Chicago as
15 a health code enforcer that would assist you in
16 making a determination that a steel tank that has
17 a certain number of years as its age -- I can't
18 articulate that any better -- would be stressed
19 and the liquid contents therein leak out?

20 MR. OSLAN: Objection to form.

21 MR. TUCKMAN: Objection to relevance.
22 Objection to asking him to speculate.

23 MS. MARTIN: It's just a yes or no.

24 THE WITNESS: It's not just a yes or no. I

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1 have some but I don't know what the age or the
2 specifications or normal rot time on a tank would
3 be.

4 BY MS. MARTIN:

5 Q. What are the variables that you would
6 need to know to make the determination that a
7 steel tank after a certain number of years would
8 begin to leak and its contents --

9 A. I would not attempt to make that
10 determination. That's not in my area. I would
11 merely be concerned with the fact that the tank
12 was either leaking or not leaking.

13 MS. MARTIN: I have no questions.

14 MR. OSLAN: Do you have any knowledge that
15 leads you to believe that the tanks on the Dutch
16 Boy site leaked?

17 THE WITNESS: No, nor that they did not.

18 MR. OSLAN: You don't know either way?

19 THE WITNESS: No.

20 MR. OSLAN: No further questions.

21 MR. TUCKMAN: If the tanks did leak, you have
22 no knowledge as to when those tanks started
23 leaking?

24 THE WITNESS: That's true.

002599

1 MR. TUCKMAN: No questions.

2 FURTHER EXAMINATION

3 BY MR. STONE:

4 Q. None of the samples that you took on the
5 site revealed anything besides lead or asbestos,
6 anything toxic?

7 A. I took no samples looking for anything
8 other than lead or asbestos.

9 Q. When you take a sample it's just a piece
10 of the ground, isn't it?

11 A. And the person submitting the sample
12 specifies what they're looking for.

13 Q. So when you took your piece of ground,
14 for lack of a more scientific description, and you
15 said to Dr. Foreman or whoever it is in your group
16 that does it, here, Doctor, here's my pieces of
17 ground. Check them for lead and asbestos --

18 A. No, I checked the ground for lead. The
19 only asbestos sample I ran was a piece of pipe
20 material.

21 Q. So you took your piece of ground and
22 asked Dr. Foreman to check it for lead, and he
23 came back and he gave you a test that checked for
24 lead?

002600

1 A. Yes, sir.

2 Q. And nothing else?

3 A. Yes, sir.

4 Q. Therefore, as a result of your test you
5 have no idea whether any other toxic materials
6 were in your ground samples?

7 A. No, sir, not as a result of my test.

8 MR. STONE: Okay.

9 MR. OSLAN: I do have one more question.

10 You were asked some questions about
11 Exhibit 2 -- Exhibit 3 and Ms. Martin asked where
12 the sample was taken, the one reflected as 2300
13 parts per million lead.

14 That was taken on the property line
15 between the Dutch Boy property and the neighboring
16 International Harvester site; is that right?

17 THE WITNESS: It was taken on the
18 International Harvester property at the line on
19 the Harvester side.

20 MR. OSLAN: How far from the line?

21 THE WITNESS: Maybe a foot, 2 foot.

22 MR. OSLAN: No further questions.

23 MS. MARTIN: We'll reserve signature.

24 FURTHER DEPONENT SAITH NOT...

002801

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF DU PAGE)
4

5 I, Sandra A. Kaspar, a notary public
6 within and for the County of Du Page and State of
7 Illinois, do hereby certify that heretofore,
8 to-wit, on the 30th day of April 1992 personally
9 appeared before me ROGER N. CIESLIK, a witness in
10 a certain cause now pending and undetermined in
11 the Circuit Court of Cook County, Illinois,
12 Chancery Division, wherein City of Chicago, et
13 al., are plaintiffs and NL Industries, et al., are
14 defendants.

15 I further certify that the witness was by
16 me first duly sworn to testify the truth, the
17 whole truth, and nothing but the truth in the
18 cause aforesaid; that the testimony then given by
19 said witness was reported stenographically by me
20 in the presence of said witness and afterwards
21 reduced to typewriting by computer-aided
22 transcription, and the foregoing is a true and
23 complete transcript of the testimony so given by
24 the said witness as aforesaid.

002602

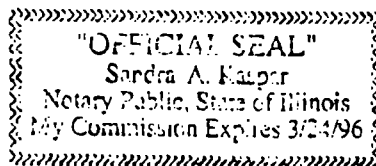
1 The signature of the witness to the
2 foregoing deposition was not waived.

3 I further certify that the taking of this
4 deposition was pursuant to notice and that there
5 were present at the taking of said deposition the
6 appearances as heretofore noted.

7 I further certify that I am not counsel
8 for nor in any way related to any of the parties
9 to this suit, nor am I in any way interested in
10 the outcome thereof.

11 IN TESTIMONY WHEREOF, I have hereunto set
12 my hand and affixed my notarial seal this 12th day
13 of May 1992.

Sandra H. Kypar, CSR
Notary Public, DuPage County, Ill.



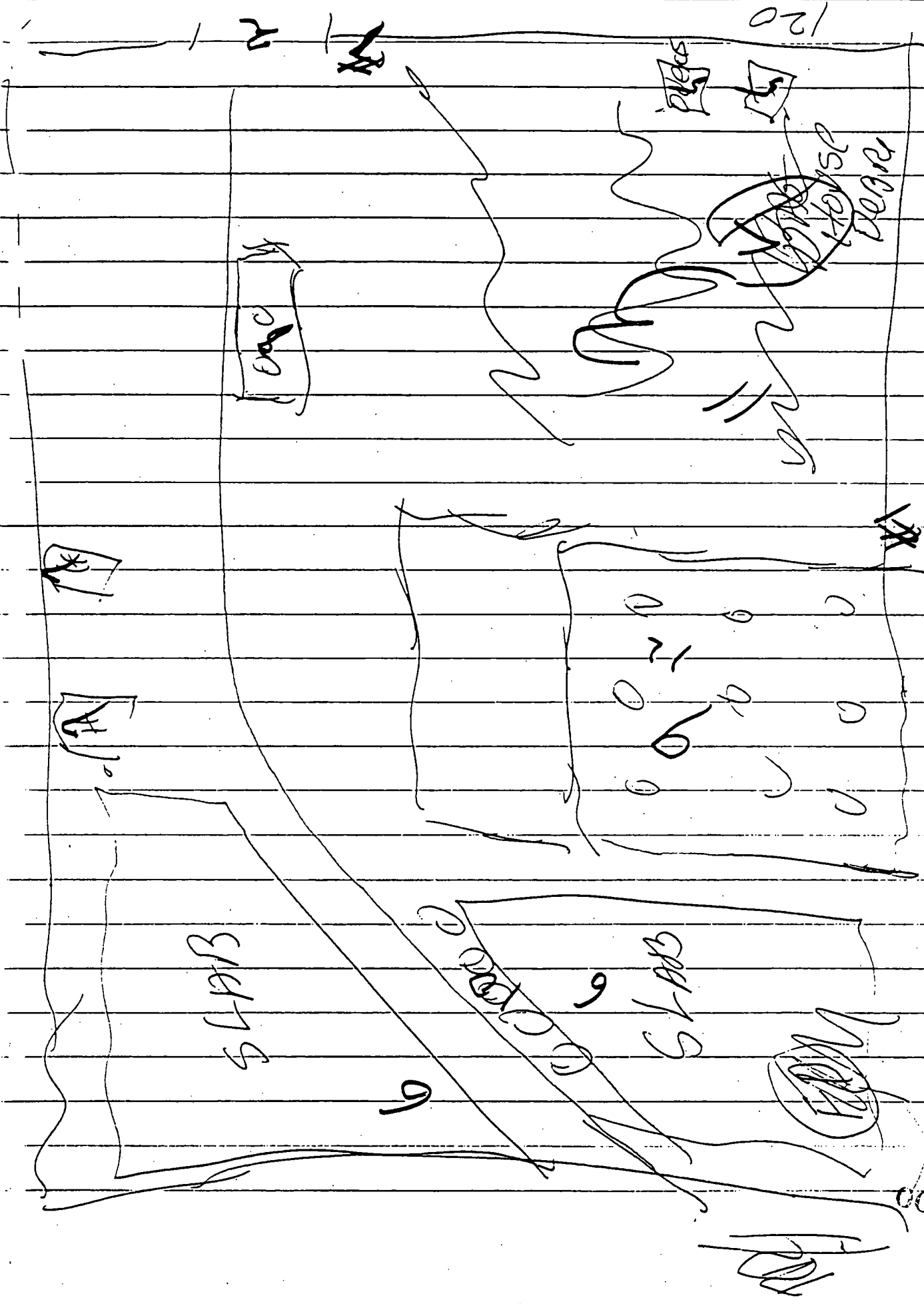
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DEPOSITION
EXHIBIT

EXHIBIT # 1
DATE 4/30/92
INP 16

Peror. A

503200





217/782-6760

August 10, 1987

Refer to: 0316005116/Cook Co.
Chicago/Dutch Boy
Superfund/Community Relations

Alderman Lemuel Austin
34th Ward
507 West 111th Street
Chicago, Illinois

Dear Alderman Austin:

This is written in reference to the former Dutch Boy Paint Plant located at 12042 South Peoria in Chicago's 34th Ward.

In June, 1986 the IEPA performed an immediate removal cleanup at the Dutch Boy Site to address fugitive lead dust and asbestos.

A subsequent clean up was implemented during November, 1986 through January, 1987. At that time the Dutch Boy site underwent a comprehensive clean up that included a partial demolition of deteriorated structures; complete removal of all process equipment and surface debris. The Site was considered surficially remediated of all lead contamination.

During follow up site visits in March and April, 1987 unauthorized dumping of general refuse along the western boundary and continued dumping on the southeast portion of the Site was observed.

In June, 1987 subsurface soil sampling was attempted but had to be delayed because of hampered access due to the increasing accumulation of refuse.

It is obvious that there is a total disregard for both the effort and the great cost expended by the State to perform the cleanups and the regulations prohibiting unauthorized dumping.

The generation of this letter is prompted by the Agency's twofold concern; for preventing another safety and health threat at the Dutch Boy site due to increasing rodent infestation, fire hazard and general safety hazards; and the necessity to perform future work at the site by the Agency.

Therefore, we are asking your assistance in removing the existing refuse and implementing controls to prevent future dumping. We would welcome the opportunity to discuss a Plan of Action at your convenience.

DEPOSITION
EXHIBIT
CIESLIK
EXHIBIT # *2*
DATE *4/30/92* REP. *AK*

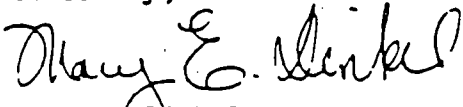
002605

DB 106451

Please contact Mike Orloff, IEPA Community Relations (312) 345-9780 or Mary E. Dinkel, Project Manager (217) 782-6760 with any questions or to arrange for a meeting.

Your assistance is greatly appreciated.

Sincerely,



Mary E. Dinkel, Project Manager
Immediate Removal Unit
Remedial Project Management Section
Division of Land Pollution Control

MED:kah/p-1

cc: Roger Cieslik, Chicago Health Department
Ray Castro, Streets and Sanitation, Chicago
Mike Orloff
Don Gimbel
Northern Region
Division File

002806

Dutch Boy Plant - Soil Samples

Sample	Wgt of Sample	Nitroch A.H. Reading	P.P.M.	Ave P.P.M.
International Harvester (Property Zone)	1.014 g	2.25 x 10 =	2,218.9	2,251.7
	1.015 g	22.50	2,364.5	
		2.40 x 10 = 24.00		
Dutch Boy Mid-Proria (Monte & Debra)	0.995 g	18.56 x 10 =	18,653.2	18,756.1
	1.008 g	185.6	18,859.1	
		19.01 x 10 = 190.1		

809700

MEMORANDUM



City of Chicago
Richard M. Daley, Mayor

TO: Arlene Martin DEPT: Law, 180.
FROM: Roger Cieslik *RNC* PHONE: 8482
CD DATE: 1/28/92

Attached please find some additional information on Dutch Boy. The Department of Health's costs may be summarized as follows:

Public Health, (Health Code Enforcement):
\$10,000

Environmental Lead Program:
\$9,240

For a total of:
\$19,240.

If you attempting cost recovery, please include this amount.

002442



DEPOSITION
EXHIBIT
CIESLIK
EXHIBIT # 4
DATE 4/30/92 REP. ME
002609